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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Before The Honorable Larry Alan Burns, Judge

THE SHERWIN-WILLIAMS COMPANY, Plaintiff,	)	
VS.	)	NO. 13-CV-01946-LAB
JB COLLISION SERVICES, INC., et al., Defendants.	)	

San Diego, California
Tuesday, November 17, 2015

TRANSCRIPT OF JURY TRIAL, DAY 1

(AFTERNOON SESSION)

APPEARANCES:

For Plaintiff:
YOUNG BASILE HANLON & MACFARLANE PC
3001 West Big Beaver Road, Suite 624
Troy, Michigan 48084
BY: JEFFREY D. WILSON, ESQ.
EDDIE D. WOODWORTH, JR., ESQ.

For Defendants:
JACKSON LEWIS, P.C.
225 Broadway, Suite 2000
San Diego, California 92101
BY: PAUL F. SORRENTINO, ESQ.
JOHN PAUL NORDLUND, ESQ.

Reported By: James C. Pence, RMR, CRR, CSR No. 13059
Official Court Reporter

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P R O C E E D I N G S

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(Proceedings were heard in the presence of the jury:)

THE COURT: All members of the jury are present. Counsel and the parties are present.

Mr. Wilson, you may make your opening statement.

MR. WILSON: Thank you, Judge.

I'll remember to turn on my mike.

OPENING STATEMENT

MR. WILSON: Can you hear me okay? Can you hear me okay?

THE JURORS: Yes.

MR. WILSON: Thank you very much for the attention you've paid already to this litigation and the facts that were read to you by our judge.

We, the parties, tried to do as good of a job as we could in stipulating to the basics and any of the facts regarding the contracts and some of the events that happened. There's a lot of facts and there are a lot of events that the parties could not agree upon and we could not stipulate to, and it could not be read to you by the judge, and that's probably no surprise, given that we're here in a lawsuit. We couldn't work things out, and we had to come into court.

This case is about a contract. That's what it is. It's a contract case. All right? I -- okay. And this is only a contract case. You're going to hear a lot of evidence from the defendants trying to make this something it's not, and we say that you're going to hear evidence from us establishing a contract, establishing that it was breached, establishing that Sherwin-Williams attempted to resolve peacefully, amicably, and not have to come into court. That wouldn't work, and so we had no alternative. Sherwin-Williams filed a suit seeking to enforce the terms of his contract.

That's what this case is about. The contract is between Sherwin-Williams and several shops that are on this side of the aisle here, the defendants. I'm going to refer to them as "defendants," but they are JB Collision Services, Inc., JJT, Inc., and Mr. John Tyczki, the two corporations. And collectively they have three body shops, and Mr. Tyczki is the owner. Now, they're the defendants, and when I refer to the defendants, that's who I'm talking about.

We are the plaintiff. The reason we're the plaintiff is that we filed suit in this court seeking to enforce the terms of our contracts with the defendants. What you won't hear is Sherwin-Williams, the plaintiff, having sued trying to obtain multimillion-dollar verdicts, trying to bully, trying to push down its contract partner. Instead, Sherwin-Williams is here simply seeking to enforce a bargain that it made in 2008 and again in 2011 with the defendants.

In this contract dispute, the terms of the deal are not in dispute. We -- we don't have to worry about whether he said or she said something about what the terms mean because we have a written contract, and you'll see the contracts. We will provide them to you. They are stipulated into evidence. You'll actually have the pieces of paper, and at times I will put the pieces of paper in front of you and talk about some of the terms. This isn't about whether or not one person said something to the other that created a contractual obligation.

This is a written contract entered into in 2008, another written contract entered into in 2011 between these parties, and there was performance from that year until the time that those contracts were prematurely terminated by the defendants. So the contracts themselves, as you heard with many of the stipulated facts that were read to you, are exclusive supply contracts.

I'm going to call Mr. Kurt Hammond from Sherwin-Williams to the stand, and he's going to explain to you what these contracts are for, what the purpose of them -- what they are -- what the purpose of them are and why Sherwin-Williams feels that it's important that its contract partners like -- formerly like the defendants live up to their end of the deal. He's going to tell you what the benefits are to both sides of that deal. He's going to explain to you that this is a bargain well struck, and both sides, if they perform, will benefit from it.

And Sherwin-Williams expects at the end of the day that when its contract partners like the defendants find a better deal, they at least finish up their contract. If they believe that they have a better paint that they want to find that they want to use, well, it's a free country, but you have a contract.

We disagree, and our -- or my client and my client's witnesses will present evidence to you that our paint did exactly what it's supposed to do, and it's a high quality of paint, and it is a very popular paint in the State of California. And most importantly, it was a very popular paint with these defendants up until the time, as you'll see from the evidence, that they decided to breach the contract by terminating it early before the contract was up.

Now, why did they terminate early? This entire case, we'll see from the evidence, started because defendants made a mistake about what that contract says. They made a mistake about when the contract was up. It is a $1.3 million exclusive supply contract that is measured by the amount of paint that they buy from Sherwin-Williams, and then there's a second contract in 2011 that has similar terms. You'll see that deal, and that is a contract that exclusively requires that they buy our paint and they buy nonpaint-related shop supplies until they reach $250,000 in paint purchases on that contract, and that was entered into in 2011.

But when -- when the defendants thought -- thought mistakenly -- that they had reached the $1.3 million term at the end of that contract, that's why they terminated. That's why you'll see -- that's why they started bringing in other paint companies and looking to consider taking a different approach with the paint that they use at their shops.

Mr. Tyczki will testify in this case, and he testified in this case already that if he had known or if he had only been $1 million toward that $1.3 million contract term, he would not have terminated this deal. Just keep this in mind as we go forward with some of the evidence.

When the defendant -- excuse me. When the defendants made that mistake and when they told us, "We're terminating. We're discontinuing," we showed -- tried, and you'll hear from Mr. Hammond. You'll hear from others. We tried to show them that they're reading the contract wrong. We gave them as much of a chance as -- as we could to explain that they mis- -- misread the contract, but by then, it was too late, and it was too late because they had already started down the road of changing paint suppliers.

Sherwin-Williams sent them a warning. Sherwin-Williams didn't run into court, file a lawsuit, attempt to bully, to make them do something that they weren't required to do. They sent them a letter saying, "You've breached the contract. Within 15 days, please resume the contract obligations. If not, we have to take legal action."

They sent them those letters, but it was too late, and the reason it was too late is that the defendants entered into another exclusive supply contract with another paint company. And as everybody knows, if you get married twice at the same time, one divorce is going to have to take place. And the question, I guess, is which divorce is going to be cheaper.

The defendants here decided that they were going to stick with this new company and that they were going to insist that the contract doesn't mean what it says. You'll see that they insist to this day that $1.3 million of paint products that they agreed to buy doesn't mean that. It means that $1.3 million of paint and nonpaint and everything we buy from you. "Don't believe your lying eyes," they say. "Just believe what we say that we think this contract means now" except that the contract is in writing, signed by the parties, and it was performed at that point for over four and a half years.

And so because the defendants would not change their mind, they would not reverse course from this mistake they made, Sherwin-Williams filed that lawsuit in August of 2013. That's how we got here today. You'll hear from Sherwin-Williams representatives that when they brought that lawsuit that we're here for today, they did not seek multimillion-dollar verdicts. They did not seek more than the contract allowed.

They -- these -- Mr. Hammond and others will testify that we are here to seek the benefit of the deal that we struck, and that's all we're seeking, and our damages, as you'll see, are $400,000, give or take. We'll have a witness come up, and we'll walk you through the numbers, and that amount is based on the profits that we would have earned if the defendants had not terminated this deal prematurely and wrongfully.

We will not be seeking damages in addition to that. We will not be seeking punitive damages. We will not be seeking consequential damages of harm and reputational loss and fraud and other things. With -- we're here to ask you and present evidence to you that we have a contract, and we ask you that the defendants be held responsible for what they agreed to.

Now, after we filed that lawsuit in August of 2013, this is now about six months after we sent them the letter saying, "We're going to have to take legal action. We've explained to you what the contract means. But if you guys insist on this, we're going to have to go into court."

Fast-forward six months later, we filed this suit. The defendants then countersue, and they didn't just countersue for a contract claim or they didn't just countersue us to say, "Well, we don't think that we should be held responsible for the rest of the deal." That's not what they did.

Instead, four and a half years after being in business with Sherwin-Williams and painting 12,000 cars with our paint, 12,000 cars, four and a half years, they sued, and now you'll hear them argue that the paint from Day 1 was substandard, generally poor, was riddled with paint defects. "It was not worth anything that we paid for it. It was so bad that we are not just asking to not be held to the deal, but, in fact, we want $20 million," not "We want to show you, Sherwin-Williams, that we don't owe you the rest of the deal." No. They retaliate with this amount of $20 million at least. That's so far, and what they allege is seven different appearance defects.

Now, this is what they allege when they filed this counterclaim. Seven different types of defects were appearing on every vehicle from the beginning of this relationship in 2008 -- -7, and we'll show you what they -- the names of them. Some of you may have heard some of them. Orange peel was mentioned in the stipulated facts, dieback, but they started with seven defects, 20 -- $20 million. Not only are they alleging that we breached the contract by providing them substandard generally poor paint, seven defects throughout the whole contract.

They're also alleging that we committed fraud from the beginning until the end of the contract, and you'll hear them testify about fraud from sundown to sunup every day seven days a week every time. Apparently, Sherwin-Williams representatives talked to them. They were lying to them. That's what they're saying now. Four and a half years after being in business, 12,000 cars later, that's what they're saying.

The seven different appearance defects that they started this case with importantly are color-matching wrong -- color-matching problems, sanding scratches, color-fading, solvent-popping, paint shrinkage, dieback, orange peel. They listed all of those, and they said those -- "We've had a problem with from Day 1."

Now that we get to the end of this litigation and go into trial, what you'll hear is effectively there's one defect that they say is on every car and that one defect is dieback. You're going to hear a lot of talk about dieback. We're going to try to make it as interesting as possible, but we have a job to do, and you're going to hear our witnesses tell you exactly what that means and what it doesn't mean.

And you're going to hear our witnesses say what we did to test when they claimed after we sued and what we found, and you're going to hear witnesses from Sherwin-Williams talk about what causes dieback and what doesn't. And you're going to hear about application or you're going to hear about an inherent defect that renders the paint completely useless and dies back on every car, which is what you'll hear from the defendants.

Well, we know you're going to keep an open mind of that. You're going to listen to all the evidence, and we have that job to do, and we're going to present a lot of evidence to you, and it's going to be technical, but we need to do it because painting vehicles is a very technical process.

You're going to hear our witnesses talk about how -- automotive refinish industry, and automotive refinish painters is probably the most difficult type of painting there is. It is not easy. It is not home interior painting like my wife and I do with the roller, and it's not paint. You'll hear from our witnesses that it is automatically poured for you and mixed in a -- like they have at Home Depot or Lowe's where it shakes it up for you, puts exactly the right amount. That is a process that's all done by the painters employed by the defendants in this case or the body shops generally.

So after -- after you hear all about the dieback, we'll ask you to make some decisions as the jurors about what these claims are and what they aren't. But I ask you to keep in mind throughout this whole process that they started with seven, and what you're hearing now is dieback, dieback, dieback, and that's pretty much what this case has now devolved into.

And so even though we went from seven defects at the start of the case asking for 20 million, they're effectively arguing that now there's one problem with the paint. "It's a dieback problem, but we still want 20 million." We're going to ask you to evaluate that evidence very fairly.

We're going to show you that Mr. Tyczki, through his actions and his words, because Sherwin-Williams had the audacity to sue him to enforce the deal, wants revenge. You're going to see on multiple occasions how he makes statements like "I haven't totally slandered you yet, but I can't wait to."

You're going to see in this trial -- you're going to see that type of mentality and that type of desire come through the witnesses that they went -- and the evidence that they put before you and the amount of money that they ask you to award them in this contract case because defendants want also a payday. They aren't asking for a walk-away from the contracts and excuse us from our liability. They're not asking for some amount that's about equal to what Sherwin-Williams has asked for. They want a payday, and they want to ask for 20 -- at least -- million dollars.

And you'll hear Mr. Tyczki talk about how he came up with that number, and he said, "Well, on average, it's $2,000 to paint a car, to redo a car that has a defect on it, and I've painted 12,000 cars. So actually it should be 22" -- "24 million." So I think it's 20 million that they're still with -- but he -- he's testified it might be 24 million. These are airplane numbers. You'll hear they're just in the air.

Defendants ask you and they're going to ask you throughout this whole trial to ignore the obvious, and we're going to ask you not to. We're going to ask you to remember what the judge said about your common sense, about bringing your experiences and credit -- and your ability to make credibility resolutions and see what is right in front of your face. And despite what the allegations are, we're going to ask you to employ that -- that common sense and not ignore the obvious. That is going to occur more than a few times when the defendant puts its countersuit on.

Back up -- and I'm going to just take you through a quick timeline of what happened here so that you can understand and contextualize how this dispute arose from a contract relationship. In 2008, as you heard from Judge Burns and the stipulated facts, these parties entered into a deal in writing with JB Collision for two shops called J&M Auto Body and El Dorado. That deal was an exclusive deal, as I said, and it was valued -- and the term of it was measured by the value of $1.3 million, to make purchases, $1.3 million, of Sherwin-Williams paint.

Exclusive. "Exclusive" means exclusive. We know what "exclusive" means as human beings. We know what "exclusive" means in a contract. It means exclusivity, means you're not going to buy non-Sherwin-Williams products even though you admit that that's your obligation.

There's -- you're going to hear from Mr. Kurt Hammond why are we locking these body shops into a deal unfairly. Is that -- is there some purpose for an exclusivity term? Yes. He'll tell you -- he'll tell you all about it. He'll tell you about a contract partnership that Sherwin-Williams has with these body shops, and you'll hear about the sales of these paint -- this paint that the defendants are here to smear. You'll hear him talk about how much this paint is sold in California and how much it's used by shops throughout California.

In 2011, two years after the parties enter into this 2008 deal, Mr. Tyczki opens up a third shop, forms a new corporation, and enters a new deal with exclusivity with a prepaid discount so that he can use some money, the discount that he's going to get over the term of the contract to help buy this new body shop as a part of the contract. It's part of the contractual relationship.

He entered into this new deal at a time when he had bought our paint for at that point about a year and a half, almost two years, which I'll ask you to remember when we hear from the defendants that this paint was awful, terrible. I'll ask you to remember that two years into the deal, they signed up for more.

In 2008 to 2013 now, combined to -- both shops combined, they painted 12,000 cars. They purchased about $1 million of paint among the three shops. And during that entire time from 2008 to 2013, they filed four warranty claims seeking money on cars that they say have a defect, four, four warranty claims over four and a half years and 12,000 cars.

In early 2013 before the contract term had been met, they started -- the defendants started demoing other paint in their shops, getting ready to make the switch. Why? Because, as we've said we'll show you, Mr. Tyczki mistakenly thought he had finished or was just on the cusp of finishing that deal, and he signed a new deal with a competitor of Sherwin-Williams and got a new advance, and that's the double marriage I talked to you about before.

In August of that year, as I said, that's when Sherwin-Williams, having no choice but to enforce their deal, filed this lawsuit. They filed counterclaims, and we have litigated this case. 22 depositions have been taken. Thousands and thousands and thousands of pages of documents have been exchanged. That's the context of how we got here. That's the relationship. That's the road we were on.

And now the defendants want to paint -- sorry for the pun, but paint a different picture after Sherwin-Williams sued them. The defendants want to paint this relationship as sour. They will get on witness after witness and say it was terrible and reputation, "We need 20 million."

But you'll see throughout the contract relationship, they didn't buy less. They bought more of this paint that was so substandard and generally poor and all these problems. And you'll see that in 2011 when they signed up the new -- the new shop, they bought more of our Sherwin-Williams paint. They want you to ignore the obvious.

Now, when I said that we will put this evidence on of retaliation, I mean it, and what you're going to see -- and told you before that from four and a half years when we started this contract and when -- then when Sherwin-Williams had to sue to enforce the deal, this is the timeline and amount of those four warranty claims, those four warranty claims, four and a half years, combined value of those 4- or 5,000 bucks roughly. That's what they were looking for us to pay, and Sherwin-Williams paid it each time.

Then we sued, August 14th, 2013. And then what happened? 40 warranty claims have been filed since we sued, ten times the number over a four-and-a-half-year period. Now defendants have filed and sent us 40 warranty claims in a 26-month period versus four over four and a half years, and the total amount of those warranty claims, you can see -- they're charted up -- about over a hundred thousand dollars.

And I've told you before they're not here asking you solely to give them the value of what they have been able to find in warranty claims and reimburse them that and let's call it a day. They want $20 million or 24- or whatever the number is today. The aggregate is that four versus 40 before the lawsuit and after.

You'll hear Mr. Tyczki talk about how those 40 warranty claims came to be. You'll hear from Sherwin-Williams that nothing changed. There's no remarkable event that happened on

October -- on August of 2013 other than the fact that we filed a lawsuit against the defendants. You'll hear that what the defendants started doing once we had the temerity to sue was call all these vehicle owners whose cars they had painted over the past five years with Sherwin-Williams paint who had not returned asking for a repaint. They called them saying, "I'm a concerned business owner. You bet I do. I need to call them and say there might be defect paint on your car. Please bring it back."

There's a recall. They call vehicle owners who were not complaining, brought them -- to bring them in. You'll see -- you'll see the evidence to -- as we will contend, and we'll show you the evidence -- to fabricate as many warranty claims as they could to build a case so that they get us for 20 million or 24-.

Again, he's a concerned businessman. He says, "You bet I do. I'm going to call these people in because how could I not?" You'll hear him say, "Well, I couldn't ignore that they had this bad paint on their car, and so I had to bring them back, because I wouldn't be a good businessman if I didn't." You'll hear him say that.

Well, then I ask -- and you'll hear -- "Okay. But how many customers did you do that for between 2008 and 2012 during the contract?"

"Oh, yeah. None. None. Zero." Zero from 2008 to 2012.

But we're going to show that that speaks volumes in and of itself right there.

You're going to hear from one of the former painters that worked at Mr. Tyczki's shop who said, "I didn't experience dieback on all these cars. I had maybe one time or two when I had a dieback issue. I called for technical assistance." A guy named Dave Cardenas, who you'll see here today, a tech rep, comes in. He adjusted the facility, the paint top -- the paint booth and the -- the heating coil and fan, and he made some adjustments to the temperature controls and didn't have a problem after that. Sherwin-Williams' technical rep came out, provided technical assistance. He didn't have a problem after that.

Now, you'll see that throughout this case, Mr. Tyczki and his employees have given evidence. Some of them will be called into the trial, and they'll give evidence. And we will spend an inordinate -- inordinate amount of time in this trial nailing down the most simple facts that should not be in dispute like, for instance, when Mr. Tyczki discontinued the use of Sherwin-Williams products.

This is a declaration. We'll show you that Mr. Tyczki filed in October of 2013 right around the time that they countersued saying under oath, under penalty of perjury, "On about January or February 2015" -- "-13, on behalf of JB, JJT, and myself, I discontinued the use of Sherwin-Williams." Okay?

That's -- that's the timeline. He said that's when he discontinued. Now he says, "No, no, no. That's not when it was. It was two months later."

Well, again, don't believe your lying eyes. I mean, that is his statement. They admitted in the answer to our case that the lawsuit that we filed -- they admitted in their answer -- as an example, we'll show you that Mr. Tyczki irrevocably guaranteed the performance of JJT on that third agreement. He guaranteed -- personally guaranteed their performance as part of the deal, signed the document, and he admitted it. We'll show you the answer. Admit -- "We admit the allegations that you're making."

Now they deny it. Every time -- not every time, but many times, it seems that we have a fact that's established, and then we have a different version of the story, and we're going to show you many of those times.

Now, we say that the defendant will not prove this countersuit. The reason I'm talking about this is because our case is -- you'll see is just a contract, some evidence of when it was terminated prematurely.

Damages. That's the contract. That's the elements. That's the case that Sherwin-Williams will put on to prove their case. But then we're fielding the counterclaim, this 20 million-dollar fraud and unjust enrichment and breach of contract, breach of warranty claim and all that. And then on the defensive, we're going to tell you that they're not going to prove their case, and we're going to ask you to keep in mind all the different allegations they make and at the end of the day tally it up and say did they meet their burden, and you'll do that and be instructed on what they're required to prove.

And we're going to ask you to use your common sense and say, "Well, they allege that the AWX product line is so substandard and so inherently defective that they lost business, and they lost their goodwill with their customers, and they suffered their" -- "harm of their business reputation." And we'll see if they prove that to you, and we'll see if they prove any reputational harm because of something that Sherwin-Williams did or didn't do.

Well, I ask you all: Why enter into a new exclusive supply contract in May of 2011 if the contract that you were under and the AWX paint that you were buying was so substandard, inherently defective? And we'll see what their reasons are for entering into that contract in 2011, and you'll see that they've given multiple reasons, and we'll put those out in front of you, and we'll ask Mr. Tyczki about that.

And we'll say, "Well, why did you enter into that 2011 agreement? Was it because, as you allege, that you were fraudulently induced and misled into the deal because you were told that the products were good and they weren't good? Is that why, or is it, as you say, that 'Well, I had to do it.

The first contract told me I had to do it'?" even though that's not what it says and he signed a new deal. Or is it that -- is it that he wanted to get an advance to open a third shop and it was -- that was the requirement, is that you enter into a new exclusive supply contract for your new shop, and "I needed that money, and that's why I entered into the deal"? Well, we'll see what the evidence is at trial now.

Mr. Tyczki is very upset. He was very upset as he testified about the money at issue in that 2011 deal. I told you that he wanted an advance. You'll hear evidence that he came to Sherwin-Williams. He said, "I need $180,000."

You'll hear Mr. Kurt Hammond tell you about the negotiation he had with Mr. Tyczki, and he said -- well, you'll hear from Mr. Hammond, and he's going to explain it. But in very, very brief summary, he's going to say, "I told him, 'I'm going to go to bat for you, try to get you $80,000 from corporate as an advance discount on your future purchases so that you have capital that you can, you know, go open that new shop.'"

Corporate, you'll hear from Mr. Hammond, looked at the numbers, looked at the projections, and said, "We can only do 40-. We can give you a 40,000-dollar advance, can't do 80." And so Kurt called him up and told him that it was going to be $40,000, not 80-. You'll hear Mr. Tyczki say he was very upset. In fact, he hung up the phone on Kurt Hammond because he was -- it was a breach of trust. He was upset about it.

Now, they're not suing for that, what they call a bait-and-switch or whatever they're calling it. That's not part of this lawsuit as a claim. They're not saying, "I am entitled to the extra 40-." No, but it's a very important fact that we're going to show you because that's when this relationship changed, because he thought he had an 80,000-dollar advance discount and it turned out that it was 40-, and things took a turn. They took a turn from where things were going into that purchase of JJT.

That's the turning point in this relationship, and it's about money. It's not -- you'll see -- they'll tell you our folks -- it's not about paint. It's not about paint quality. They stand behind our quality. It's about money.

Now, what you're also going to see in this trial is that the defendants are going to bring in, I think, seven -- they say seven former body shop customers who used Sherwin-Williams in the past, probably going to see like a rapid-fire parade of disgruntled former body shop owners talking about the problems that they say they had, and we'll see what they say, and we'll -- I'll question them.

But as you listen to these body shop owners, we want you to keep some things in mind that after we filed this lawsuit, we have these e-mails of John Tyczki e-mailing these other body shop owners, talking to them about "how we can help you," and this -- this is a September 11th, 2014, e-mail with a man named Paul Jacovelli. I believe he's coming in to -- is part of the defendant's case-in-chief and will be testifying. You'll see how Mr. Tyczki e-mailed him and said, "Here's how you go about filing a warranty and getting full rates from them. Okay? And here's my lawyer's number. It was great meeting you."

And another person at Bumper Doc, he e-mails and says, "I look forward to working on this Sherwin-Williams deal with you."

So he's out there, you'll hear, not just getting former vehicle owners to come in, but he's out there making the calls of the body shop owners, making a case. "I look forward to working with you on this Sherwin-Williams deal with you. My attorney is Paul Sorrentino. He will give you a call."

Jered Tucker, Tucker Auto Body, he's e-mailing June of 2014. I think Tucker -- Jered Tucker might come in and talk to you as they -- as one of the witnesses they call. Mr. Tucker was e-mailed by John Tyczki saying, "Just want you to know I have three more shops. Very upset one of them is having a car shipped back from Texas with the same issues as the red truck I looked at with you. I think he's going to call a witness regarding that Texas car, I think. When it gets here, I'll look at it and let you know. These guys want to start a class action and/or their own lawsuit right away." We'll see if that happened.

May 16th, backing up another month, 2014. He tells Mr. Tucker at Tucker Auto, "Be sure to take pictures of whenever Sherwin-Williams comes out and take these samples and that you stripped off their products. Save in the file. I will be your expert witness. I will come out, and I will confirm your issues and document them for you."

This isn't -- this -- we will argue as an advocate and Mr. Cardenas, our technical rep -- he will have something to say about whether or not these body shop owners that are in these e-mails and that they're calling really had the problems and what relevance they are to this case.

Mr. Tyczki issued a warning.

(Video was played but not reported.)

MR. WILSON: He's talking there about the vehicle owners that I told you about that they've been calling in. You'll also see evidence that -- whether or not he could get any of those otherwise satisfied vehicle owners to come in, bring their cars so that they could check them out and redo them and submit it as a -- one of the 40 warranty claims after this lawsuit was filed, whether or not that was successful.

You will see evidence regarding how they went about submitting warranty claims on vehicle owners who came in with new accidents after the lawsuit was filed. New collision, got -- someone got into an accident. Again, they had their car for the past few years fixed by Mr. Tyczki's shops with

Sherwin-Williams paint on them, brought in two years, three years later for the new accident they just had, had not once come in before that -- to complain about their paint job, not once.

But when they got in, you'll see -- you'll hear his managers looked around the car and said, "You were here before. You got Sherwin-Williams paint over here. We could submit this new" -- "this part along with the new collision. We'll submit" -- "we'll repaint, submit this as a warranty, no cost to you."

Now, this vehicle owner -- you know, all of them, but any of those vehicle owners -- why wouldn't they do that? I mean, this car is already in there. The car is already being repaired. And if he's -- his managers are saying, "Well, we'll submit this warranty. It won't cost you anything," okay. Well, we ask you whether that's a -- we're going to -- we will ask you and our witnesses will say that's not a good-faith warranty claim. That's -- that's coming up with evidence to make your case.

Now, I said that they are going to ask you to ignore the obvious and the evidence that they'll put before you on this loss of gloss or dieback. Okay? You'll hear these terms interchangeably used. It's a dulling, it's a matting, a loss of gloss, a dieback. It's basically a clear coat that's on top of -- on the top of the finish of the car. That clear coat is dying back, is losing its gloss, and it's causing an appearance problem.

Sherwin-Williams in this document here has a manual for painters and shops like this, and those painters who know the technical process can look at the cause of that kind of an appearance defect. They can look at how to prepare -- repair it, and they can look at what to do to prevent it.

Now, the cause, from our own manual, says it can be from top coat applied in heavy wet coats, inadequate flash time between coats, insufficient film thickness of the top coat, the clear -- the glossy clothes -- coat. It can be from improper cleaning. It can be from using a poor grade or too fast evaporating thinner or reducer.

You're going to hear Dave Cardenas tell you, our tech rep, about the importance of picking the right reducer. It can be from insufficient air movement in the paint booth itself. You'll hear him tell you about how this is not unlike anything else drying. You'll hear him say that if you have a wadded-up pair of bluejeans that come out of a washing machine and you want to dry them, if you give one up and throw it into a corner, they'll dry, but if you hang them up on a clothesline, they'll dry faster. If you put them in a heated air -- forced air environment like a drying machine, they'll dry even faster. It's no different, you'll hear from them, in paint booths. Different paint booths are -- give you different environmental conditions, and things dry differently.

Now, the defendants will say, "Come on. You just want to blame the applicator. It's your product. That's the problem. It's not any of these things. It's not inadequate flash time. It's not too thin of a coat." No. Our painters did everything right.

We're not the only one -- by the way, you'll see evidence that every paint manufacturer has the same type of manual that says, "These are the common" -- "commonly known causes of dieback, of loss of gloss, and here's how you fix it." You fix it with -- in mild cases the sanding and the polishing. In extreme cases, you might sand it down and refinish, but you'll see that they all agree on what causes it. There's certain things that you can do to avoid it.

Now, I asked -- and you'll see Mr. Tyczki testify about whether or not when he stood up in a deposition -- some of you know what that is, some of you don't, but he stood up in a deposition, given the company's position, and we asked him, "Okay. All of these factors that I just showed you, right, all of these factors, do they -- can they lead to conditions like dieback? For instance, would you agree with me that the loss of gloss and/or dieback, either one, could result from the top coat of clear being applied and heavy wet coats? Is that possible?"

"I have no idea." This is Mr. Tyczki.

Okay. Well, I said, "Is it possible that loss of gloss could be caused by inadequate flash time between the coats?"

"I have no idea."

"What about insufficient dehydration?"

"I have no idea."

"What about film thickness, too thin of a film thickness on that top coat?"

"No idea."

"Well, how about -- how about insufficient air movement? How about that?"

"No idea."

"Well, how about insufficient temperature for the drying to take place when this technical process is taking place?"

"Oh, I have no idea."

"Well, is it possible that it could result from choosing the wrong reducer like paint thinner basically? It reduces so that you can spray it through that spray gun." Okay? The painters know what that means. "Is it because of that?"

"No idea."

"Well, is it possible that if you get the spray gun set up incorrectly -- is that possible?"

"No idea."

Well, we have an idea, and we have lots of those, and we went out -- and almost 40 post-lawsuit warranty claims. Our techs went out, and they took paint samples off of all of those cars, and they have a lab do testing, and our labs did testing, did quite a bit of it. They found things like -- for instance, some of the cars that they were submitting for refinish that they had refinished and are submitting for a warranty so that they could refinish again with someone else's product -- turns out -- you'll see that -- our lab reports say they didn't use Sherwin-Williams products. There was some other product than Sherwin-Williams on that car, on the part that they're complaining about.

Well, how can that be if they're exclusive to Sherwin-Williams and they're buying only Sherwin-Williams paint and paint products and liquids? How could they have competitive products, non-Sherwin-Williams products, on the paint in one of the coats on these warranty claims that they're asking for hundreds or thousands of dollars for? Well, we'll -- we'll look into that.

Our lab found this more than once, and you'll hear testimony and you'll see documents about what our lab found when it did testing. It didn't use intuition. It didn't use its best judgment and observation in coming up with -- using -- relying on experience and trying to divine what the cause could be. They actually did testing, and they did the analysis, and our records are in the evidence. They'll be put before you.

And you'll see, again, this is a case where you will see four versus 40. You might ask yourself -- so we're going to have evidence in the case. You might ask yourself, "Well, maybe they have all these warranty claims. Maybe they just do, you know, way more work on cars than other shops in San Diego and in California and Arizona and Nevada."

They must because in 2008 to the present, there are the total number right here of warranty claims complaining about AWX causing any one of these die -- seven defects that they listed in their complaint. We pulled them all, gave them to the defendants, and this is what we found, that 39 -- it's 40, but one is a little bit of a dispute, 39 filed. Giving them the benefit of the doubt -- of the doubt, 39 filed by these defendants, which is way over 50 percent of the total of all body shops in exclusive deals and these three states combined.

And then you might ask yourself, "Well, maybe they just do 50, 60, 70 percent of the total work in these three states." Well, we'll present evidence to you that that's not the case, either. In fact, they do just about as many mix -- mixes of AWX products as all these other fairly large body shops in these three states. You'll see that there's nothing extraordinary about the amount of painting they do.

Now, we asked -- or I asked you about "Well, how would they have other products on these paint jobs that they were submitting to us?" which, of course, they would need to admit. That would void the warranty claim. Of course we wouldn't do that. How would that happen if they were exclusive to us?

Well, we'll show that even though the defense knew they were exclusive, they knew they were buying from a competitor of Keystone Automotive throughout the whole contract. We'll show you that they did this without telling us. They knew that Sherwin-Williams in this lawsuit asked for those records to make sure "You're not buying from anybody else, are you?"

They knew that they had records of thousands of dollars in purchases from a competitor during the time they were supposed to be exclusive. And, in fact, you'll see that they were buying products -- this is a quarterly snapshot from each quarter from 2008 to 2012. You'll see that they were buying paint and paint-related products from Keystone during the whole time of our contract, products that they admit -- and they will not -- I don't believe they'll deny it now -- they had to buy from Sherwin-Williams under the exclusive terms of the deal.

Kurt Hammond will tell you exclusivity isn't just so that we can have some predictability and we know how much we're going to sell and we can justify our numbers in giving you that advance. That's part of it, but he's also going to tell you that one of the reasons and values of an exclusive deal is so that Kurt and Dave Cardenas and the thousands of others Sherwin-Williams employees know that their products that they stand behind the lifetime warranty are not being mixed with other non-Sherwin-Williams products. It's a guarantee that we stand behind, but we have to insist that it's only our products used. That is not too unreasonable. These folks will tell you.

Again, they will ask you to ignore the obvious, and we will ask you not to. They will -- they will show you in this case -- I think that they will admit still that there are 12,000 cars, that they refinished with our products 39, 40 warranty claims. And even though you're going to hear a lot of evidence about the parade of horribles and how bad Sherwin-Williams is, we'll counteract that with Sher- -- with people like Dave Cardenas and Kurt Hammond and the reputation we have and the amount of shops we sell to.

At the end of the day, they are going to ask you for tens of millions of dollars in damages because they experienced defects with less than 1 percent of the cars that they painted in the entire time of our contract, less than -- less than 1 percent. And we will show you and prove by a preponderance of the evidence, as the judge talked about, that they, the defendants, have been in breach of our contracts since the first day they were signed, and we found it out in this lawsuit because we know that they did -- and Kurt will tell you. We'll have a representative tell you they did not inform Sherwin-Williams when they signed the deal in 2008 that they were under an exclusive deal with another paint manufacturer.

Remember I talked about getting married twice? That was 2008. That is a violation of the plain language of the contract. We'll show you that part of the contract. They did not inform Sherwin-Williams that they were purchasing nonpaint -- nonpaint products for the life of the contract, and, of course, we say and we'll prove that they breached the contract when they prematurely terminated our deal and signed up with the new paint manufacturer.

So at the end of the day, you're going to see our evidence. You're going to see a countersuit put on by the defendants to make you all think that our paint was defective from the first day we sold it to them until the last, and they're going to do it based on 40 warranty claims, 40 warranty claims, four during the period of the actual contract. They look like those cars, it's 40 against 12,000 cars. 12,000 versus 40.

They're going to come in and present evidence to you. We're going to -- we're going to do our best to show you not to believe it, but they're going to present evidence that it wasn't 40, it wasn't -- there were a hundred more times that this happened. We deny that. We're going to show you -- we're going to contest that. We're going to put evidence in that that didn't happen. But even if they add a hundred to it now after the fact, now we're at 12,000 versus 40 and another hundred, and that's a long drive they want you to take.

We're going to ask you, as Mr. Sorrentino asks you, to -- don't make up your mind, wait to see the evidence, and return a verdict for us.

Thank you.

THE COURT: All right. Thank you, Mr. Wilson.

Mr. Sorrentino, you may make your opening statement at this time.

MR. SORRENTINO: Your Honor, when do we take a break so I can time myself?

THE COURT: Oh, probably 3:15 or so.

MR. SORRENTINO: Okay. Thank you, Your Honor.

OPENING STATEMENT

MR. SORRENTINO: Good afternoon, ladies and gentlemen of the jury.

What you heard is Sherwin-Williams' story. This is exactly why I asked everyone to please promise to wait to hear what we had to say and what we are going to show you. There are going to be a couple surprises in this previous trial, I will tell you that, and it's going to have to do with the defective product that Sherwin-Williams sold not just to my client but to many others.

There's a few things I think I need to clear up before I start because if that's all there was to the story, that's all there was to this case, if those were all the facts, then there's no need for us to be here obviously. And I think the most -- the hardest thing to do would be to make a decision, especially sitting as a jury in a case like this, without having all the facts.

First, I think that we need to make clear a couple of things. One -- one is that Sherwin-Williams certainly knew for a fact that Mr. Tyczki was in another contract before he signed on with Sherwin-Williams in September of 2010, and he canceled that contract either that day or the day before. That's September 10th, 2008.

And the Court read to you and we have marked it down as an undisputed stipulation undisputed facts. When you all came in at the beginning, the judge read to you in or about June of 2008, Sherwin-Williams sales representative Jose Garcia approached John Tyczki regarding a potential contract for automotive paint products to J&M and El Dorado. Of course, he knew he had another contract because how else was he painting?

See, that's an important concept because I'm going to show you in a few minutes how Sherwin-Williams breached the contract that John Tyczki signed on the first day, but before I do that -- oh, and by the way, breached it continually. But before I do that, I have to also say that we have to clear up another misstatement of fact, and that is we're hearing that Sherwin-Williams is going to claim that my client breached the contract with them from the first day because he was buying other products.

You're darn right he was buying other products because the product he was buying before he entered into the contract was a solvent-based paint, oil-based/solvent-based paint, and he had moved into this contract with Sherwin-Williams for the purpose of buying waterborne paint because it's more environmental-friendly and he wanted to get ahead of the curve. He knew that California was going that way. In fact, it is that way, and so he decided that that's what he would do.

Okay. So you can't start painting a car with oil-based paint, solvent-based paint, and then all of a sudden on Tuesday -- Monday, you prime it and then you put a base coat on it, and Tuesday -- Tuesday, you paint it with waterborne paint. Not only that would have voided the warranty, but you can't do it. That's oil and water, and the industry is well aware and Sherwin-Williams knows that there's going to be a transition period. What my client didn't know was how long that transition period was going to be.

So you saw a graph, and some of that is accurate. The purchases are accurate. But what were the purchases? Because Keystone sells primarily car parts. That's what they sell. So when there's a mirror or a fender or a door stain or a sail panel or a trunk lid, that's what he's buying, and that is not what Sherwin-Williams sells.

Now, that being said, there were purchases that were made by John Tyczki -- well, actually, his shops, his painters -- for things like razorblades and tape and that type of thing, but I'm going to show you why that was done. I'm going to show you two things.

Number 1, I'm going to show you that -- I'm going to show it to you right now -- right now during this opening statement. I'm going to show you that Sherwin-Williams failed to provide their product AWX even as of the date that he signed the contract and even seven days later, and I'm going to prove it to you with their own documents. There's a lot that I'm going to prove in this case, and I'm going to show you some stuff right now that is -- that I'm going to prove to you through their own documents.

So -- and I -- I want to tell you that -- I'm going to tell you right up front that I'm not as tech- -- technologically savvy as my counterpart. So I carry papers. I had a -- I had -- that's IT Pete. I call him IT Pete. He's the guy with the glasses. I had to hire him because I don't know how to work the equipment. So to the extent I may have to use the ELMO, I mean, forgive me because that's how I grew up in this practice.

And I'm going to tell you this, too. I'm not the most eloquent attorney you're ever going to hear. I'm just not, and I'm not politically correct. I say stupid things sometimes. Okay? For instance, you know, I'm going to call their product what I think it is, and I'm going to show you why -- during the course of trial, I'm going to show you why through my expert, who's been in the field as a chemist for over 40 years and has developed paint systems, and he's going to do it using their documents.

And my chemist is a chemist. Their expert is an applications expert. That means he's a defense -- he worked with a painter. He's their head corporate painter. His name is McCord, and I'm going to show you through him the materials defects in this paint. I'm going to show you with their own documents because I am old-fashioned, and I read paper. I read every piece of paper, and I read every piece of paper that got dumped on us in this lawsuit. They did not.

So let's start with -- oh, and I also want to say this before I forget about these warranty claims. I'm going to show you that, and you're going to hear testimony that the reason that there weren't more warranty claims made during the period of time that Tyczki -- that John Tyczki was in these contracts was because when his people complained to Jose Garcia, Jose Garcia was bringing free product to his shops and not documenting these things as warranty claims.

So Sherwin-Williams only wants to say, "You don't have any warranty claims," but at the same time -- at the same time, it was them. We didn't document them. These are body shops. These are not -- this is not Corporate America. They're Corporate America. They're the multibillion-dollar company -- -- multibillion dollar company. Let's -- let me just refer to the judge's statement concerning the facts. It's Fact No. 3.

Sherwin-Williams is an international company with gross revenues in 2014 approximately $10 billion.

Okay. And what I have is a man, John Tyczki, the son of a Navy veteran, who grew up in San Diego, who got his first job in his late teens in the auto body business by sweeping floors, and then he learned how to do bodywork, and then he learned how to paint. Sherwin-Williams doesn't even know that. They never asked him that. He was a body man. He was a painter. He learned how to estimate it. He learned how to be an assistant manager. He learned how to be a manager, and he saved his money. He saved his money, and he saves his money.

And 25 years later, 22 years later, whatever it is, he bought his first body shop. He opened it, J&M Auto Body. And then a few years later, he opened up El Dorado, and he was able to do that because the former owner was selling it. He was retiring. And then a couple years after that, he opened John's Collision.

So let's talk about what happened here because -- and I'm -- I'm not going to go in perfect chronological order, but I'm going to try.

Okay. First, why would John Tyczki -- and I'm going to ask you as the jury when we're in closing why would you believe any of these charts that you just saw when the entire relationship, the start of the relationship, was founded on fraud. We're not just suing for breach of contract. You can't just -- you can't put water in a cannon and throw food-coloring in -- from last Easter and call it paint. You cannot do that, and I don't care what warranty they say was waived. That's why we're here, because you cannot do that.

Okay. So what was the initial fraud in this case? Well, I'm going to point to the deposition of Jose Garcia, and Jose Garcia was the sales representative who I just mentioned. So you can see the questions and answers because one of the selling points of Sherwin-Williams was "We can paint the car from prime to shine in 50 minutes."

So "Question: Did you ever tell John Tyczki that the Sherwin-Williams product line allowed a car to be painted prime to shine in 50 minutes?"

And he says, "Yes." He says, "Yes."

And then I ask, "Was that in order to induce him to purchase the AWX product line through you as a Sherwin-Williams sales representatives" -- "representative?" Excuse me.

And he says, "Yes."

Okay. And now look at what I asked him. "Can you give me the name of any shop in San Diego in which you know for a fact that they were able to paint a car from prime to shine in 50 minutes using the AWX product line?"

And he says, "No."

And I say, "There's none; correct?"

"Uh-huh."

"Is that a 'yes'?"

"Yes."

But that's what he just admitted he told Mr. Tyczki to induce him to enter into the contract before there was a contract signed. That's one of the reasons that we're here today, but it's not the only reason because it's not just on the shoulders of Jose Garcia that these lies were told. Sherwin-Williams themselves generated them.

We'll take a look at what's going to be Trial Exhibit 426. 426 shows on the left side -- it looks a little bit too big. Can you move that over, please. There, call it out. Okay. Call it out. "From prime to shine in as little as 40 minutes."

Now, is 40 minutes correct? Is 50 minutes correct? You'll see in the next -- if you can move to the next one, you'll see that the call-out shows that it's either 40 minutes or 50 minutes depending on what you're going to use. And Jose Garcia already admitted under oath that he knows of no shop in San Diego who's ever done it, but that's their selling point, and people rely on stuff like that. That's not puffery. That's not "Oh, yeah, you know, we've got the greatest product in the world." This is specific.

Okay. Now, I want to jump to the second contract before I talk about the first -- excuse me. I don't want to do that. I want to tell you about the termination of these agreements because that came up. First of all, the judge read this.

Again, we've agreed on this fact, and it's Fact No. 33.

John Tyczki told Derrick King, the area sales manager for Sherwin-Williams, the first time that John Tyczki met him in 2012 that John Tyczki's relationship with Sherwin-Williams was unrepairable at this point. Okay? He made no bones about it. He said it in 2012, and he said as soon as he reached that $1.3 million magic mark, he was done with Sherwin-Williams.

Why was he saying that in 2012 if we made a mistake in 2013? The mistake that was made was buying this stuff from the beginning. That was the mistake, and John Tyczki was caught in the contract, and so John Tyczki stayed in the contract.

So what about the second contract? The second contract was entered into because he was told -- and I'm going to show you the provision in the contract in a second, but he was told by Jose Garcia that you had to enter -- you had to buy from Sherwin-Williams. And when I show you that language in the contract, you'll see why Mr. Tyczki believed that.

But before I do that, let me show you the letter that John Tyczki -- because we're hearing about "Yeah, you know, when did he cancel the contract? You know, what's the date?" and so on and so forth. He did receive a breach letter. You saw that, but he wasn't in breach. He was still buying. He was still buying paint, that AWX line from Sherwin-Williams. So he ignored it. He didn't contact Derrick King about it, but as you'll see from other e-mails, there's never a return call.

Okay. "There's broken promises," he says in the e-mail, and I'll show that to you. But the issue right -- at this point is he said he was going to terminate the contract as soon as he reached the $1.3-million mark. He said it in 2012, and then he showed a spreadsheet to Derrick King, the area sales manager, and he showed him where he was with his purchases.

Okay. And he said, "This is where I'm at, and when I get here, I'm done."

And Derrick King said, "Well, I've got about six months, then, to try to win your confidence, to win your trust, to get you to stay with us." He didn't say, "Oh, no, no. You didn't" -- "you miscalculated this." That is not what he said.

So Trial Exhibit 334 is John Tyczki's letter of April 3rd, 2013, and this is on the second contract because he wrote a letter on the same day about the first contract and said, "I'm done." And then he wrote on the second contract, and he said, "Per the supply agreement dated May 24th, 2011, we are terminating this agreement on April 8th, 2013." I don't know why that's going to be an issue. Those are the dates. That's the letter.

And he's repaying the entire amount of the advance of $40,000. He repaid the entire thing. Okay? There's a check. See, this is how come I go slow sometimes. There's a 40,000-dollar check. They accepted it. They took it. They cashed it. And then five months later, they sued him. Okay?

That's what they did. That's why we're here.

And by the way, there was no communication, no communication from Sherwin-Williams to John Tyczki between this letter and the date that he was sued, none, with the exception of they came in, and they took all this paint, and they took all the equipment, and they took their little computer, and they took their heat guns and their temperature gauges and all this stuff they had put there to try to fix the dieback problems, the things they were trying to get -- you know, give to his painters to try to use to try to fix the problem, try this, try that. They took all that, and then they gave him credit for the unopened cans. They took the open cans, they took the unopened cans, and they gave him credit, and now they claim that he was in breach. Why would they do that? Why would they do that?

You know, John Tyczki walked away from this, from both contracts. He walked away from this relationship with Sherwin-Williams for his peace of mind, and he expected -- he believed foolishly, I'll be the first to admit -- and he'll tell you, "I'm stupid." He'll tell you that because he believed the promises of Derrick King, the area service -- area sales manager. He believed him when he said, "We'll honor the warranties."

Okay. Why weren't there warranties before? Why weren't there warrant -- so many warranties? Because once the contracts were canceled, Sherwin-Williams could no longer fix the problem without documentation by giving John's shops free paint.

Okay. That's how they -- that's why they don't have documentation, but you're going to hear that the painters complained, and the managers in the shops complained. John's a working manager. He was operating in the stores. They complained to Jose Garcia, and when the boss says, "Oh, it's a hundred more" over a hundred times -- no.

You'll hear from Paul Teixeira, who's the El Dorado manager, when he complained to Jose Garcia. He didn't complain about one car. He keeps 40 to 45 cars in there at any time. He's complained about all of them. He's shown him. Now, if you take just a hundred times from his shop and there's 40 cars, that's 4,000 cars.

And, you know, Sherwin-Williams and Jose Garcia have a claim in this case, and Jose Garcia has testified that he never gave free product. Well, I'm going to have -- you are darn right. I'm going to have body shop people here -- and by the way, when their depositions were taken, they were current customers of Sherwin-Williams, not former, current, and they're all going to tell you the same thing.

They are going to tell you that Sherwin-Williams, whether it was Jose Garcia or his counterpart Hilary Castro, brought free product rather than do the paperwork, rather than make the claim, rather than submit it as a warranty claim. And, you know, I'm going to show you why that is when my expert testifies. I'm going to show you -- I'm going to show that to you in documentation. That's their documentation.

Okay. Bob Stall Chevrolet was using their product. Paul Jacovelli, the person he mentioned was the body shop collision manager -- he testified even in his deposition that Jose Garcia brought clear paint, brought clear-coat paint, whatever it is, for three solid months, and then he was asked how many cars would that be for. 80 cars a month, 240 cars, 80 cars a month, just in that one place, just because they didn't want to file or do documentation to make warranty claims.

And, you know, they want to show us the analytical testing. I have to tell you the analytical testing for auto shops -- not only do I not believe it, my expert is going to tell you you can't do testing off of dry paint samples. You've got to test in a different way or look at the test results when it's not in the middle of this.

But be that as it may, 240 cars out of one shop, Bob Stall Chevrolet. And then Jose Garcia went to him and said, "Look, we can't keep doing this. I'm going to send you the stuff, but I'm going to do it through Polo's" -- Polo's is a jobber. That's, like, a meet -- a middleman -- "and you have to sign the bill, the invoice, but you don't have to pay it."

And then Bob Stall Chevrolet said, "Huh-uh. We're not doing that. We're done."

Okay. Where's the analytical testing results for Bob Stall Chevrolet? Where's what they call PQR's, product quality reports, for them? You know, you saw that pie chart. You're going to hear body shop owners come in, and they're going to testify, "I made complaints, I made complaints, I got free products" and so on and so forth, and yet they're not on that chart. They aren't -- their names aren't on that chart.

Okay. So we're kind of at the mercy here of this 20-billion-dollar company when it comes to being forthright with this information. And yes, I'll be the first to admit and my client will admit on the stand -- he will say, "I made a mistake when I was asked for those documents, those" -- "the invoices from Keystone." He believed that they hadn't bought anything from them, and he asked his managers, "Can we buy material from them?"

And they said, "From Keystone?" They told him, "No." It was car parts.

And he did -- he made a mistake, and he said, "Yeah" -- "no, we don't have anything because it's all car parts."

And they -- Sherwin-Williams pressed the issue. There's no doubt, no doubt. And I said, "We've got to find these documents. Do you have them here?"

"Yeah. I went in the back, and they pulled out I don't know how many boxes. We went through them and said, 'Hey, you know what? There was some purchases. There was some purchases,' and we turned those documents over." That's how they discovered it. He turned them over, made a mistake.

People make mistakes. He is not a hundred-billion-dollar corporation. What he is is a single guy who -- he's a man who started a business from nothing, and these guys don't really want money from him. They want to shut him down because if they can shut him down, they shut down -- they shut up all the other body shops who complain about their product. That's the truth. That's what this case is really about.

And I'm going to show you the next -- the next piece of fraud. I already showed you what Garcia said. Well, show -- can you please show 322. I just want to see the date on the contract. The date of the contract is September 10th, 2008, and -- see, if I had an ELMO working, if I had it in front of you, it would be really up, and I'd be pointing at it, and we'd be done.

Is it not working? It's 322.

Okay. So look at the top part of this. Okay? I just want to point your attention to this right now, September 10th, 2008. That's the day that this contract was entered into.

Okay. Now, I'm going to show you the next exhibit -- oh -- in order -- in time order. 5 -- this is 515, exhibit 515. This is what is called the PQR, product quality report. Let's look at the date of this, September 8th, 2008, two days before this contract was signed. And look at the reason that this PQR was -- was created, dieback, loss of gloss.

And the assigned tech rep -- I can tell you those are his initials, not probably the best initials that a guy can have, but that's Alex Silva, and he's somebody who's involved in this case. I asked him in his depo, "Why did you let them put those down as your call sign?" He hadn't thought about it, just had -- but he has a point.

Look under "Supporting Details. Area Painted: All. Vehicle Make, Vehicle Year. All. All." I didn't know what that meant. I'm trying to figure what does that mean. You know, maybe -- was he just being lazy? No. Look at the second page of this document. And on the second page under his comments, "All paint jobs at this customer are dying back. We duplicated the problem on a 20-by-20 panel and will send in for evaluation. Locally, we cannot find out what is happening." This is two days before my client signed his contract, all paint jobs at this place. This isn't my client.

And by the way, before I forget, you know, I know there's at least one warranty claim that John Tyczki submitted which he didn't even paint. It was painted by another body shop in the area with Sherwin-Williams paint, and the guy came in because he had dieback. And so it's not even like he's fixing his own paint jobs. He's fixing others as well. In any case, there's fraud. There's fraud right here in front of our faces.

Did they tell John Tyczki they were having problems with dieback? "Oh, we never heard of dieback, dieback. We don't have any defects." Oh, and incidentally we are not claiming that -- whoops. I've got to get my other piece of paper. We're not claiming that we're not -- we're not still claiming -- still stating that the problems were color-matching and then dieback and the rest of the stuff because dieback occurs when the clear coat gets sucked into the base coat, which is one reason why their analytical test results or reports make no sense, because there's no clear demarcation because it's all getting sucked in.

There's a chemical problem. There's a problem with the formula. Okay? That's the problem. And when it dies back, you see the sanding scratches because, you know, you're sanding the coat. Solvent-popping. You -- paint shrinkage. That's what we're talking about. Orange peel, which is protrusions or grit. I'll show you specific documents concerning that. And color-fading. We haven't backed down on anything. Those are still the problems. They're all one problem, and it's under the rubric of dieback.

Now, David Cardenas, who we've heard about, is a painter. I'd call him a tech rep, a technical representative, but he's a painter, and he's a really nice guy. You'll meet him. They're going to call him as a witness. He is a nice guy, and I do believe he's a good painter. They say he's -- on a scale of 1 to 10, he's a great painter, and I don't have any reason to doubt that.

And when he started with Sherwin-Williams, he actually started on September -- I'm sorry -- January 1st of 2009. Okay? Why is that important? Because John Tyczki bought this product, signed this contract on September 10th, 2008, and I'm going to show you Jose Garcia's call logs. This is Breach No. 3 or 4. I don't know what I'm up to yet, and I'm still on the first day of the contract.

In his call log, that's where he does his activity report. Although he's not required to, we're going to hear that. In fact, Mr. Adams is going to testify to that because he did so in his deposition. There's no rules or policies about what they're putting there, but nonetheless he put in there -- on September 17th, 2008, he put in there that he was meeting with John Tyczki on that day to get ready to install the AWX product.

To get ready? What do they expect John Tyczki to do for seven days? Paint with his blood? Blood, sweat, and tears? Because that's what he would have had to do if he didn't continue to buy from the other company. He had no paint. They -- they didn't -- they didn't give it to him, and then it doesn't -- you don't put the paint back in and, you know, do all this stuff you've got to do. You don't do that in one day or two days. That takes a couple days, takes a week.

So let's figure at the earliest, they got it in a week later, September 24th. Within two weeks, John Tyczki's shops encountered a major problem with color-matching. And by "color-matching," that means that if it said it was red and you went to their formula venue, you got red out, and it turned out to be blue or whatever. It wasn't even close.

So John Tyczki got upset, and he said, "I don't want this stuff." He started complaining within -- within 40 -- within 30 days, started complaining.

So what did Sherwin-Williams do? You know, very interesting because Jose Garcia comes in and says, "Okay. Yeah, we'll pull it out, and we're going to put in solvent-based paint." He didn't buy solvent-based paint. He was trying to get ahead of the curve, but that's what they did. They took all the AWX waterborne product, they took it all out, and they put in this solvent-based paint that Sherwin-Williams makes.

And by the way, it's good stuff. It's good stuff, but it's not what he was buying. It's not what he paid for. He had no problems with that paint. He had that paint in his shop until March of 2009 -- actually, because of the transition, it was April -- and one shop in May and June in the other. And, again, that's on Jose Garcia's call logs.

Okay. But that's not what he was paying for, and that's why we have a discrepancy in the number of cars that were painted. Was it 12,000? Was it 10,000? You saw a part of what John's answer was about to be. He's saying 10-. If you want to say 12-, it probably was 12, but there was all those months when he was painting with the solvent-based paint. And we're not complaining about that, but we are saying -- what number am I up to? How many fraud -- how many breaches? They breached first, they breached often, and they continued to breach, and then they breached last.

Okay. The excuse factory by Sherwin-Williams is in full operation. So David Cardenas gets hired on January 1st, 2009, and he for the first time goes into John's shop J&M Auto Body -- he goes in there on March 16th, 2009. I know. Can -- how bad can I be that I can remember all these stupid dates, you know, and I missed my wife's birthday on Saturday? You know, that's the life of a lawyer, I guess.

Look, he came in, and he put the AWX in, and he said that he thought that he was installing the stuff for the first time. Let's -- let's take a look at his deposition testimony because this is very, very important.

Okay. "In March" -- this is my question to him. "In March of 2009 when you first visited J&M Auto Body for the installation of the AWX product line, were you told by Greg" -- Greg is Greg Matthews, and he's the manager of J&M, and he'll be testifying -- "or anyone else that the AWX product line was initially installed in September of 2008 in that body shop?"

And he says, "I had no -- I had no prior knowledge, no."

"Have you come to learn since March of 2009 that the AWX product line was originally installed in J&M in September of 2008?"

And basically, he says, "No, not until this lawsuit was filed," and the lawsuit was filed in August of 2013.

Why is this important? Because when he visited his shop -- this is his tech report. That is about to get put up. Here it is. In his own handwriting, he writes March 16th to the 20th. Do you see how he signs that on the bottom, March 20th? He writes under the objectives, "New AWX installed."

It actually wasn't. It was supposed to. It was supposed to be installed. It was installed for a short period of time in September of 2008. But look at the last line that he writes in his own handwriting. "Shorter bake for," and then product number, "for less dieback," not to eliminate dieback.

By the way, Sherwin-Williams denies it had any problem with dieback. They said there was no defect. Why is the word "dieback" in this document at all? And he wrote it. He had been working for the company at this time for January/February and, you know, about halfway through March; right? Why am I bringing that up? Because, again, we see that John Tyczki was sold a bill of goods that didn't exist the way it was represented to him.

And, you know, in 2012 -- I'm going to jump ahead. In 2012, when John was completely fed up and just ready to get out of his contract, why didn't he cancel it sooner? Because he owns two body shops -- three now -- three body shops, and he can't compete against these guys. So he just resigned himself to buying this crappy paint, painting the cars, buffing them out, do everything he could to get to this $1.3 million, hoping and wishing and being told that the warranties were going to be honored so he could get out of this contract, so he could wait to get out of this contract. That's what he did.

So when it got to the point in late 2012 after he talked to Derrick King and he's having all these dieback problems -- oh, they're not documented as warranties, but guess who didn't document them -- okay. What did he do? He finally got disgusted, and he said, "Okay, Sherwin-Williams. You paint this car," and it was a 2008 Toyota Sequoia.

Okay. So guess who painted it? Dave Cardenas went into El Dorado and painted that car -- that vehicle. He painted that vehicle and painted it himself. He painted one side. He took almost a whole day to paint one side. I don't know, you know, how you get work done and work out with the customers doing it like that, but that's what he did, and it died back.

Now, if it's an application error, if our painters are so bad, if they're so, so bad, why is it that their top Number 1

A-plus painter in the whole wide world, Dave Cardenas, goes in there -- David using his own gun, by the way. Okay? So he can't say he used a defective gun, and he doesn't.

How did it die back? There's only one explanation, and that's the paint formula, is the problem. That's what the problem is. And, you know, the judge read to you stipulated facts, and no -- stipulated facts means that we've stipulated. We've agreed to them, starting with Number 49. It says, "Dieback and/or loss of gloss could result from..."

What's the first reason? It's not an application error. It's from defective paint formula, defective paint products, or any of the following, and then you start blaming the painter. Okay? Well, I guess if we blame the painter, then their painter isn't all that good, either. It's either that or every painter in San Diego County and every other body shop that's going to come in here -- they've got bad painters, too. That makes no sense because it's not true. So the excuse factory again is rolling around on the conveyor belt here, and it's the painter's fault, you know?

By the way, the judge also read a few other stipulated facts. Orange peel could result from -- oh. What's the first reason here? Defective paint formula, defective paint products. Solvent-popping could result from defective paint formula, defective paint products. That was read to you when you came in for voir dire.

You know, Sherwin-Williams in their opening made a big point to say that John Tyczki is calling people. First of all, he's not calling people and telling them there's a recall, and he says that. He says that in his -- we're going to play a clip of John Tyczki. That's not what he said. He said, "There might be a problem. There might be a problem. Can you bring it in?"

But why did he do that? Well, it's a twofold reason. One is because he is a concerned business owner. He knows he's got problems, and he knows he did hundreds of redos with free paint and then got sued for his trouble because Sherwin-Williams hasn't honored one of those warranties. In fact, just -- as of what, two weeks ago, they made sure before this trial -- they sent him an official letter rejecting it, and my client had to respond.

Okay. But also because -- and during this litigation, we agreed to inspect as many vehicles as we could. Let's bring some vehicles in so that you can see what we're seeing. And so he did call or he had somebody call. He called -- an employee called and said, "Can you bring it in? Can you bring in a new vehicle? We'd like to take a look at the paint."

And every -- and by the way, some of them went to the shop already, and others -- they just randomly brought them in. John hadn't seen the cars. His employees hadn't seen the cars. They're wherever. They're in Oceanside. They're wherever the person lives, East County, whatever. They brought the car in, and you know what? There were nine -- nine cars; right? Nine cars. There were nine cars that were inspected, nine cars that were inspected by Sherwin-Williams, and every single one of them had dieback, every single one.

So there's a problem, and the problems with this paint and the distraction that Sherwin-Williams wants to push in this case is "Oh, we sued you first. So we get to go first, and you breached the contract. So, ha, that's it. It's a simple case. It's just a simple case." It's not a simple case. It's a case of fraud. It's a case of fraud from Day 1. It's a case of breach of contract on their part from Day 1.

You know, I got -- I'm going to show you Manuel Andriano's deposition because this -- he's also a tech rep. He's also a painter. I'm going to show this to you because there's only one little thing that's really important in his -- in this deposition, and take a look at this.

So I ask him, "So in the Sherwin-Williams form itself online" -- this is that PQR form you've already seen -- "where it says 'dieback' and then 'loss of gloss,' do you see -- I have it highlighted there."

And by the way, MJA is Manuel Andriano. That dieback loss of gloss is actually a drop-down menu that's part of the PQR summary form.

And he says, "Yes."

They don't type -- even type that in. This problem is out there so bad that it's on their form when you click on that box, and it comes down with certain problems, and, oh, they click it. I was wondering why everyone has spelled it that way because personally I don't think that "dieback" is spelled correctly, but, you know, I'm not in the industry. I think it's D-y-e, but it's always spelled D-i-e. So I'm forced to adopt that. Okay? It's a drop-down menu. That tells you something, too.

I want to take a look at Exhibit 411, please, because this is -- this goes to the heart of our breach of contract case. Now, Exhibit 411 is the warranty. Okay? This is the limited lifetime warranty that -- that covers the AWX product. Take a look at what I've highlighted, "Covered Defect." D and E, "Extensive Loss of Gloss," and E is "Color Fading."

And does it cover AWX? You can see that it does cover AWX. What does the warranty cover? What does it give you? At the bottom of the page, it shows that within five years from the repair date, it's a hundred percent for any for these -- these defects, a hundred percent.

So they paid John on four -- four of them, and then when he canceled the contract, they don't pay him on any. It's 37 cars so far and $122,000 so far out of his pocket, and he's got -- well, he'll tell you probably another 50. Why? Because he can't afford to paint them and not be paid, and he can't expect and he doesn't expect and he will not allow a customer to pay him for that.

Let's take a look at the call log, please. The first is going to be the Garcia deposition, and this goes to the delivery issue, meaning why was John purchasing goods -- or not John but his painters purchasing goods or his manager running out to get something. Well, for one thing, one of the shops was only three blocks away from his store, but he couldn't get the product. That in itself is a breach.

I asked, "What would you expect the customer to do if they needed the product that afternoon to finish the job that they were working on?"

And he says, "Normally never happens."

I said, "Well, what happens when it does? Would you expect that they would run down to a store two or three blocks away, pick up that particular item themselves?"

He says, "Probably."

Look at the next page of his depo. "But if they needed the product the evening before" -- can you make that smaller so we can see it? "But if they needed the product the evening before and neither the Escondido or San Diego branch would deliver it, would you expect that they would run down to the store and purchase that 3M product to complete their job?"

And he says, "Yes."

Let's take now a look at his sales call log because this ties into it. So let's pull up the highlighted part. This is the first page of his cell phone call log. I'm only going to show you a couple. We have to close it up so we can see the dates.

Okay. See -- look at the date -- first date, September 17th, 2008, ten days after the contract is signed. "Get ready for an install at J&M and El Dorado." What? Get ready for install? This isn't a contract that when -- they decided on a napkin at, you know, Smashburger on the 10th and signed it. I should have said In-N-Out because I like it better, but I went to Smashburger a week ago, and it was pretty good.

So get ready? You don't pay for seven days if he did what Sherwin-Williams expected him to do, which is I guess sit around and close down the shop, or I'm not really sure what they expected him to do. I know what he didn't get. I know what he expected. He expected to get the paint. He expected to get the paint thing, expected to get everything that was included in the contract, and he got none of it.

September 17th, 2008. And I just pulled out a couple -- there's more, but January 12th, 2009, "Continue good service." This is -- this is Garcia's language. So you expect it to be somewhat self -- you know, self-supporting. But then he says, "Need" -- "need to improve delivery service." That's what we're talking about.

So yeah, there was purchases of other goods, but what we have in the law is substantial compliance. The breach has to be a material breach, not material like materials but a material breach like a significant and important breach of the contract. This is not that. That's what Sherwin-Williams is trying to claim now, but this is not that.

And by the way, he was getting the solvent-based paint during this period of time for which he had to purchase and he had to order and purchase, and then they didn't charge him because he refused to pay. But -- but -- but had they credited that -- those amounts to his overall bill, he would have been way over $1.3 million in purchasing the products. And then you see the last -- just seven days later "Need better delivery service." This is Jose Garcia's, you know, call log. This is his call log.

Now, after the -- again, I'm going to just tell you more trickery from Sherwin-Williams. I'm going to show it to you right now, right now. September 9th, 2013, Jose Garcia's counterpart -- her name is Hilary Castro -- goes into John's shop to look at cars that came in for warranty claims. So here you go, September 9th, 2013, and there it is.

Let's see the second page, and thank goodness some people still do it. I do it. They handwrite because otherwise we'd be having an argument about who put the notation on there, and here's what she writes. On September 9th, 2013, she writes --

I can't read it because it's too -- "authorized to conduct repairs." That's what he did -- that's what she writes on the invoice that John Tyczki gets and Sherwin-Williams gets.

What's important about that? Well, there's two things. Number 1, look at the date again, September 9th, 2013. He canceled the contract effective April 8th, 2013. What does that mean? He wasn't spraying Sherwin-Williams. Sherwin-Williams authorized the repair of their dieback problems with a competitor's product.

Now, I'm not sure if they were thinking this way, but it certainly can be inferred that they knew that he painted with a competitor's product. The product was new product. They would have no dieback problems. So that would be one claim that would not come back to haunt them. Who does that, though? Who authorizes the repair of a defective product with a competitor's product? Who does that?

And maybe that wasn't the reason. Maybe there was another reason. I'm going to show you what they said to him after he did the work on these vehicles, and these things are called releases. So here's one of the releases. I think they gave him four. So as soon as he shrinks it down, we'll be able to -- keep going. Keep going. Keep going.

All right. So -- so this is the release they give him, and I've highlighted the important language. If he takes this check, he does hereby forever release, discharge, and hold harmless Sherwin-Williams from and against any and all claims, demands, damages, debts, obligations, suits, judgments, actions, and causes of action.

Oh, why did I mention that? Why did they mention that? The lawsuit was filed in August. They want to make sure behind the back of the attorney that they're going to give this document to John Tyczki. After all, he's just a dumb little old body shop guy. "So I'm going to give it to him and hope he signs it." Why? Because look at what it says. It goes on. It says "of any kind or nature whatsoever, whether known or unknown, that customer may have or hereafter acquire in connection with customer's purchase, application, and/or use of any and all products purchased, provided by, or otherwise obtained from Sherwin-Williams prior to the date hereof."

So when he signs it, he's just released his whole lawsuit. He's released all the damages, and we're set. He's released all warranty claims that -- that are going to come in the door in the sense that all those paint jobs were done before this date.

And then -- and then they send him -- show them the next page. Show them the check. They send him copies of the checks. Here's one of them. I've got four of them in this exhibit. This is Exhibit 454, Trial Exhibit 454. Luckily, John didn't sign it, and John didn't get the money, either. But that's part of the trickery in this case. That's where our case comes from. It just keeps on going. If he had signed that, I wouldn't be standing here, talking to you about their fraud and their breach of contract.

You know, John asked them, "Can you change this release? Can you add to the end for this car only?" You'll see that -- that e-mail.

And they tell him, "No."

And here's where it is. "Can you just add for this car only? Because, you know, I'll sign it if it's for this car only?" Isn't that fair? It's -- the release is only for the repairs of this car only.

And they said, "No."

I want to jump to -- to a video clip of John Tyczki because you haven't really seen my client. You don't know him, but you're going to -- you're going to -- you're going to know him in this case because the one thing about John Tyczki is he's honest, and I'm going to tell you something.

I have an easy job in this case because he's honest, and he demands that of his employees. And are they going to make mistakes? Are they going to misremember stuff? They might. I'm sure they will. They wouldn't be people if they didn't, but they're going to be honest, and they are honest.

And this -- you heard the clip. You heard the clip about slander. "I can't wait to slander you." You know, what you didn't see was two lines or three lines later, he said, "You know, I probably shouldn't have said that because it's not slander if it's true." And you know what? He's right. It's not slander if it's true, but this is the issue that Sherwin-Williams has.

Sherwin-Williams -- and you heard it today in opening. The customer doesn't notice. The customer is not complaining, "the customer" meaning us, meaning us, the people going to body shops. We don't notice. We don't complain. Okay? That's their attitude, and they're upset about the warranty claims because he does not like that attitude.

And that's why when he had the contract in effect from '08 but really '09, middle of '09, to 20 -- April 2013 -- and there was a transition period. When -- that's why -- that's why he -- he got -- when he got the free product, he was -- he was repainting cars. He wasn't getting free product to paint the new car. He was repainting the cars that would die back, that had the sanding scratches, that had the solvent-popping, that had all the problems that we've sued them for because they committed fraud.

Let's -- now, let's watch John Tyczki in his deposition responding to these questions about "Oh, the customer didn't notice. Why are you telling them? Why are you calling them?" And by the way, to echo my client, that is so wrong. That is so wrong.

Let's play the clip, please.

(Video was played but not reported.)

MR. SORRENTINO: And then when he was pressed further on this issue of "Why are you telling the customer if they don't notice it?" John in his own way gave his own analogy, which you may appreciate or not. It depends on -- on your perspective, and it's in front of you.

(Video was played but not reported.)

MR. SORRENTINO: Okay. That's my client, and that's what you're going to hear, and that's how he feels, because he cares about his customers, because he wouldn't be where he's at now if he did not conduct business in the course of his personality. Like it or not, that's his personality, but he's as honest as the day is long. That's something my grandpa used to say. So I guess I get to say it for the first time in open court. Maybe he'd be proud of me to remember that.

But, you know, I can show you some more, but I'm not going to because I think you have the flavor of our case. That's the flavor of our case. And, you know, the great equalizer in our society is right here. It's a jury trial. Doesn't matter how many billions of dollars you have. Doesn't matter. When you need justice in the United States of America, you come to trial.

Okay. That's why you're all here. We're going to share a special experience because this is special. And, you know, now that I'm thinking about it, maybe this really is a simple case.

Thank you very much.

THE COURT: All right. Thank you.

Ladies and gentlemen, we'll take our afternoon recess at this time. It's 3:25. We'll be in recess until 3:40. We'll recommence at 3:40. Remember the Court's admonition. Please be ready to go at 3:40.

We're in recess.

(Proceedings were heard out of the presence of the jury:)

THE COURT: All right. The jury is not present. Counsel are present.

Anything we need to discuss?

MR. WILSON: We have -- I don't know if you ever got a chance to see it. I sent a tutorial video that we wanted to play.

THE COURT: I did, yeah. Mine had no sound.

MR. WILSON: Yeah, and it's for a reason. Like everything, we negotiated like crazy, no sound, no -- no voiceover, no narration that was argument -- you know, that can be called argumentative. So it was just video clips of the -- or, you know, video images of a standard process with captions and at least --

THE COURT: Okay.

MR. WILSON: -- give them a sense of, you know, what this looks like.

THE COURT: This is the five-minute video?

MR. WILSON: Yeah. It's five minutes.

MR. SORRENTINO: I -- I have no objection, but I thought we were going to do it before opening, and I just thought we weren't going to do it. So -- I mean, it doesn't seem to make sense to do it now, does it?

MR. WILSON: Well, it absolutely does.

THE COURT: It was agreed to.

MR. SORRENTINO: Okay.

THE COURT: If he wants to run it, you can run that first and then call your first witness after that.

MR. WILSON: Okay.

MR. SORRENTINO: Thank you, Your Honor.

MR. WILSON: Thanks.

Do I need the -- do I need the mike when I --

THE COURT: I don't think so. Your voice -- if you just keep your voice up, you'll be okay.

Thank you.

MR. WILSON: Thanks.

(Recess taken.)

(Proceedings were heard in the presence of the jury:)

THE COURT: All members of the jury are present. Counsel and the parties are present.

MR. WILSON: Yes, Judge.

THE COURT: Mr. Wilson?

MR. WILSON: Your Honor, I am going to at this time with the Court's permission play a four-minute, 18-second video that the parties have created and stipulated to with no sound -- so there's no technical problems there, no sound -- but some of the basic steps of refinishing an automotive -- an automobile using the Sherwin-Williams paint system.

THE COURT: All right.

MR. WILSON: Okay.

THE COURT: You may do so.

I assume, Mr. Sorrentino, there's no objection to this.

MR. SORRENTINO: No objection, Your Honor.

THE COURT: All right.

(Video was played but not reported.)

THE COURT: All right. That completes it.

You may call your first witness, please.

MR. WILSON: Thank you.

Your Honor, ladies and gentlemen, I'd call Kurt Hammond on behalf of Sherwin-Williams.

THE CLERK: Please raise your right hand.

KURT HAMMOND,

called as a witness for the Plaintiff, having been duly sworn, testified as follows:

THE WITNESS: I do.

THE CLERK: Please have a seat, sir.

Please state and spell your first and last name for the record.

THE WITNESS: Kurt Hammond, H-a-m-m-o-n-d. First name Kurt, K-u-r-t.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. WILSON:

Q. Good afternoon.

A. Good afternoon.

Q. Sir, could you introduce yourself to the jury?

A. My name is Kurt Hammond.

Q. Sir, who is your employer?

A. Sherwin-Williams Automotive Finishes.

Q. Could you tell the jury what you do for Sherwin-Williams in your job presently?

A. I'm the Director of Sales. I live in Littleton, Colorado. So I cover the western part of the United States for Sherwin-Williams.

Q. What would be the territory that you cover?

A. Colorado and everything west, including Hawaii and Alaska.

Q. Can you tell us what you do as that -- as the Director of Sales for the west region and briefly?

A. As Director of Sales, I have 34 what we call branches, company-owned stores that we sell our products out of. I have several hundred employees -- all right? -- with a -- I believe you mentioned David Cardenas earlier. So I have 15 of those type of technical representatives as well as a staff of about

34 sales representatives and 34 technical represent -- I mean 34 branches.

Q. Does your territory cover the San Diego County?

A. It does.

Q. What branches are in San Diego County?

A. We have a branch in San Diego, and we have a branch in Escondido.

Q. Thank you.

When did Sherwin-Williams first start selling AWX product?

A. We first started selling AWX product here in California in the year 2007.

Q. You've heard some testimony and stipulated facts about when the defendants started using it and when some regulations went into effect. Is San Diego County the first county in California that used the waterborne technology?

A. No. The laws in Los Angeles, California, changed before they changed down here in San Diego and Escondido. So those laws -- their rule was going to go into effect July 1st, 2008. That's when Los Angeles had to become compliant with the waterborne -- the more environmental-friendly product. So theirs changed before the Southern -- San Diego area.

Q. Do you know that -- the defendant entered into a contract in September 2008. When did Sherwin-Williams begin selling AWX in LA County?

A. Well, what we did in late 2006 -- because we had to get everybody converted in Los Angeles County before July of 2008, what we did is we put a game plan together in 2006, and we started converting our customers in the Los Angeles area in January of 2007. So we had over 115 collision shops that we needed to convert in the Los Angeles area between January 1st, 2007, all the way to July 1st, 2008.

Q. And did those conversions take place?

A. They did.

Q. Just backing up a bit, how many stores are in California?

A. We have 15 Sherwin-Williams branches here in California.

Q. Is that automotive or all stores?

A. 15 automotive stores, yes.

Q. Approximately how many employees are in the automotive division in California?

A. We have 104 employees that work for us here out of those 15 branches, and that includes our sales force.

Q. Do you know how many customers in 2014 in California purchased AWX?

A. In 2014, we had over 1300 customers buy AWX products from us.

Q. Now, of those 1300 customers in 2014 who purchased your AWX product, were they all in San Diego or LA County?

MR. SORRENTINO: Your Honor, I'm going to object. We're talking about 2014. It's irrelevant.

THE COURT: Sustained. You can rephrase with a different time.

MR. WILSON: I'll -- I'll withdraw that -- or move on from that question, then.

BY MR. WILSON:

Q. So you mentioned that you had these customers and you sell AWX. Is there any particular type of arrangement that AWX is sold under, or are there different arrangements?

A. When you say "arrangement" --

Q. Customer relationships or how they're sold over the counter --

A. We have --

Q. -- contract --

A. -- walk-in trade, but over 90 percent of our business is professional refinishers that basically do it for a living.

Q. Do you have any contracts that are particular to the AWX product as opposed to all other products?

A. No. We have contracts for a variety of our products.

Q. And we know and we've heard about the supply agreement that was entered into with the defendants in 2008. Can you describe what that supply agreement is and the purpose of it?

A. Well, many times in our industry, collision shops are needing to expand. They're wanting to open up additional facilities, they're needing to upgrade their equipment, those type of things. So what we do is we give them what we call a prepaid discount, which is an upfront cash advance to assist them with those type of things to grow their business.

Q. Why do you give an upfront advance in that type of situation, and what do you get in return for it?

A. Well, it really has to be a partnership. So it has to be a two-way. So we do things -- first of all, like I said, they want to -- you know, we hope they're upgrading their equipment and doing those type of things. But besides that, there's a lot of things that go behind a partnership, and that would include we assist them with marketing. We assist them with what we call business consulting.

So this is where we have business consultants. These are individuals that used to work in collision shops that actually can come out to the shop and assist the customer, whether it be with production, quality control to improve their CSI, which is the customer satisfaction index. We help them with layout and design. So if they're going to buy a new facility or if they have an existing facility that needs to be updated as far as the work flow goes, then we do that. And, of course, there's some technical -- technical training and technical support that our technical team gives to them.

But one of the big things is when you have somebody under a supply agreement, we talk to them about buying everything from us. That way, we know that our products are being used the way they're supposed to be doing from a quality perspective because they are mixing our solvents with our paints and that

type of thing. So we make sure that we have that cohesiveness.
Q. The term AWX waterborne refinish system has been used in stipulated facts and elsewhere. What does the system mean briefly?
A. A system basically means premium. It would be like your products. Okay? So in other words, your primers. They're made to go with certain hardeners and reducers, and then certain topcoats work over that primer. Certain clear coats work over that color. So you have to have a system when you're using a product line to make sure that the chemistry is all -- everybody is made sure that that chemistry works with that chemistry.
Q. Okay. Are you in the technical side of the automotive division?
A. I am not.
Q. Are you familiar with the contract that was entered into between the parties in this lawsuit in 2008?
A. Yes.
Q. Okay. I'd like to show you what's been marked -- previously marked as Plaintiff's Exhibit 8.
(Plaintiff's Exhibit 8 marked for identification)
MR. WILSON: And I believe this has been stipulated to. It's the parties' contract.
THE COURT: All right. Mr. Sorrentino, any objection to 8 in evidence, then?

MR. SORRENTINO: No, Your Honor.

THE COURT: All right. It may be shown.

(Plaintiff's Exhibit 8 received in evidence)

BY MR. WILSON:

Q. So is that up on your monitor, sir?

A. Yes, sir.

Q. Okay. Now, this is a three-page document. Do you recognize this document?

A. I do.

Q. Okay. Now, the term of the agreement which we have discussed -- if we can just expand a bit the number. Yeah, just zoom in. A couple more. One more.

Okay. It says, "Term of Agreement." This is the -- do you see that part?

A. Yes.

Q. Now, when it has a $1.3 million term as it's a defined term in this document, it describes what that means, and it uses the term "net" --

MR. WOODWORTH: Sorry.

BY MR. WILSON:

Q. -- uses the term "net sales," and furthermore it uses "SW Paint Products."

Now, are you -- are you familiar with the negotiation of this contract with body shops generally?

A. Yes.

Q. Okay. And did you negotiate this 2008 agreement with Mr. Tyczki?
A. I did not negotiate it with him one on one.
Q. Okay. Do you know who did?
A. I believe that would have been Jose Garcia.
Q. And who is he?
A. Jose Garcia is our sales representative -- one of our sales representatives in San Diego.
Q. Okay. Now, in Paragraph 2A, it says -- under "Sale of Products," it references a bolded defined term as "SW Paint Products." What is the Sherwin-Williams labeled?
A. The Sherwin-Williams label is what we -- what we call our goods and manufacturers. So those are the paint products that we manufacture and sell. So it would be our solvents, our reducers, our hardeners, our actual paint products, our clear coats.
Q. Okay. We'll call a witness to talk about some specific technology, but what are some of the nonpaint products that are also sold under this contract?
A. Nonpaint products are things like sandpaper, masking paper, Bondo, if you're familiar with that term, other products to be used in refinishing a vehicle that are not paint-related.
Q. Okay. Now, if we scroll down just a bit more, there's a "Price for Products" paragraph, Part 3, and it refers to a refinisher price list. What is that?

A. We have a price sheet. That's what -- we have several price sheets, but one of them is called a refinisher price list.

Q. Okay. And then there's a 3M Yellow price sheet. What is that?

A. 3M also has the price sheet -- or had a price sheet. I don't know if they still have a Yellow price sheet, but they did back then where they have a suggested price list. So that's 30 percent off of that -- that column.

Q. All right. We've talked about the advance or the prepaid discount, and I point your attention to Paragraph 5A, if you look at that, and you'll see that there's a reference to $275,000. Do you see that?

A. Yes, sir.

Q. Okay. And is that what people have been referring to as the prepaid discount?

A. That's correct.

Q. Now, how is that calculated?

A. It's calculated off of what we -- what the customer normally gives us, a -- what we call a profit-and-loss statement. So we know what their gross sales are. From their gross sales, we can then estimate how much money they're going to spend with us, and then that's how we calculate the prepaid advance amount.

Q. Is there a set prepaid advance amount for every contract,

or does it vary?
A. It varies.
Q. And is there any particular criteria other than the estimated purchases that it is based on?
A. Well, as you can see, he's going to buy his paint at what we call refinish price list. So sometimes people will combine them some -- some money with a discount. So they have a combination of both. It depends, depending on what they want the money for -- for.
Q. Okay. So if -- if I'm understanding you correctly, the discount off of the paint products is effectively paid up front instead of with every purchase?
A. That's correct.
Q. Okay. Do -- does Sherwin-Williams audit or in any other way enforce how the prepaid discount is spent by the customer?
A. We do not.
Q. Okay. Now, is there -- if we go to the next page, please, if you go down a little bit further, a little bit up -- sorry.
Okay. Now, on Paragraph 6, do you see this rebate?
A. I do.
Q. Now, is this a stand -- is this a standard contract term for Sherwin-Williams with body shops?
A. We do have body shops that get a rebate. So yes, not every shop, but some shops like a rebate.
Q. Is this in addition to the advance discount, or is this

something different?

A. No. This is in addition.

Q. Okay. If we can go down Paragraph -- I believe it's 8. Keep going. Yeah, Paragraph 8.

Okay. Paragraph 8 references warranties, and it's -- the first sentence talks about any product warranty program offered by Sherwin-Williams for which the customer qualifies. Do you know what that refers to?

A. That would refer to, like -- for instance, if they're using our AWX quality -- or product line, they would then go -- fall under that guarantee program, that warranty program.

Q. I'd like to show you what's been marked as exhibit -- Plaintiff 80.

(Plaintiff's Exhibit 80 marked for identification)

BY MR. WILSON:

Q. Have you ever -- let me get this full screen.

Okay. That's right. And if you go to the second page.

Okay. Have you ever seen this document before?

A. I have.

Q. Okay. What is this?

A. This explains our limited lifetime guarantee program.

Q. Okay. And is this the warranty that's -- you just referred to part of the product warranty program that's referenced in that Section 8?

A. Yes.

Q. Okay. What's the purpose of this warranty?
A. Well, you'll see there that it gives, you know, the customer the satisfaction -- not the satisfaction but the confidence -- all right? -- that you're going to give them a guarantee or warranty for their paint jobs that they're painting cars with with regards -- with regards to what you see here, peeling, cracking, crazy -- crazing, that type of thing.
Q. Okay.
THE COURT: Mr. Wilson, are you offering 80 into evidence?
MR. WILSON: It -- I will if it's -- I was hoping all these would have been --
MR. SORRENTINO: Yes.
MR. WILSON: -- stipulated to, but we move --
THE COURT: Any objection?
MR. SORRENTINO: No. I said -- oh. I'm sorry, Your Honor. I was telling him yes, we did stipulate.
THE COURT: Okay.
MR. WILSON: Thanks.
THE COURT: All right. You'll have to notify us on each one so we know whether to show it on the screen for the jury. You can't -- the jury can't be shown unless its admitted.
80 is admitted.

(Plaintiff's Exhibit 80 received in evidence)

THE COURT: You may show it, Tish.

MR. WILSON: I apologize. Thank you for that, Judge, and we'll be mindful of that in the future.

Can you zoom in, please, at -- and just go -- zoom into the terms.

BY MR. WILSON:

Q. I'm going to quickly ask you -- you mentioned covered defects, and you see in this box -- is that where you were reading from?

A. That's correct.

Q. Okay. Okay. Now, this is a summary of the warranty program?

A. Yes.

Q. Okay. Now, I'd like to show you Exhibit 10, Plaintiff's Exhibit 10.

(Plaintiff's Exhibit 10 marked for identification)

MR. WILSON: And is that stipulated to?

It is stipulated to.

THE COURT: All right. 10 is admitted.

(Plaintiff's Exhibit 10 received in evidence)

BY MR. WILSON:

Q. Okay. Now, we've seen this document from Mr. Sorrentino in his opening, and he -- unfortunately, this is not the most legible copy, but this is the one that's been admitted.

Do you recognize this document?
A. I do.
Q. What is this?
A. This is our lifetime guarantee contract that we entered into with -- with customers.
Q. Okay. And is this a life -- limited lifetime guarantee contract that was applicable to the AWX products that were being used on the defendants at their shops from 2008 to 2013?
A. Yeah. As long as they were using our premium -- what we call our premium products, then yes.
Q. When you say "premium products," when I -- when I mention AWX, is there something different than that?
A. Well, there's premium undercoats and premium clear coats that must be used with the -- with the AWX product line to cover -- be covered under this warranty.
Q. Okay. I'm going to ask you just to take a step back and explain for the jury -- when you say a premium undercoat and a clear coat versus AWX, could you just explain what that means?
A. Well, an undercoat is your primer. All right? And that's what you put down if it needs primer before you put your base coat, which is your AWX color, and then before you put your clear coat, but we also need to know that. We have a variety of products in each of those categories.
So it's important that you're using the premium undercoat primer and the premium clear coat to be covered underneath the

warranty as well as the quality base coat product.

Q. Do you have an economy line of products?

A. We do.

Q. And what's the name of that?

A. We have Finish 1, and we have Dimension.

Q. Okay.

A. Those are our economy brands.

Q. Now, by "economy," what do we mean? Less expensive?

A. Yeah. We call it, you know, economical, low cost.

Q. Okay. Are those products, if used by a shop that's covered by this warranty, covered for the defects that are listed in here?

A. No, they are not.

Q. And if you could look at Exhibit 12, which I believe is stipulated to.

(Plaintiff's Exhibit 12 marked for identification)

MR. SORRENTINO: Yes.

MR. WILSON: So stipulated 12.

(Plaintiff's Exhibit 12 received in evidence)

MR. WILSON: And we'll see if we can rotate that.

BY MR. WILSON:

Q. Are you familiar -- as it's rotated, are you familiar with this trifold?

A. I am.

Q. Okay. What is this trifold, two-page, back-and-front document?

A. This trifold is for what a collision shop gives the car owner for the car owner to then put it in their glove compartment or in their file that they have a warranty. So this -- this is a brochure that explains to the consumer, the owner of the car, what the warranty covers.

Q. Okay.

A. And it also gives them suggestions regarding, you know, what they should do as far as taking care of the car, the first 30 days, that type of thing.

MR. WILSON: Okay. Now, can you go to the other page on that same document, Ed, please.

BY MR. WILSON:

Q. Okay. This -- there's language here -- scroll up just a bit. It says, "Professional Refinish Limited Guarantee." I'm not going to read all of this for the jury or ask you to read it, but what is this document -- the side of this document for? What's the purpose? Is it any different than what you've already described?

A. Well, so the consumer understands fully what the guarantee covers.

Q. All right. And does Sherwin-Williams provide those -- these brochures to body shops that are covered by the AWX warranty program?

A. We do.

Q. Okay. Now, in September 2008, we know from -- and you can take that down. Thanks. And from September 2008, we know that the -- the defendants' two body shops were under contract with Sherwin-Williams for the AWX paint system; right?
A. That's correct.
Q. Okay. Now, was there a time during which the shops used the solvent toners instead of AWX-based coat?
A. Yes, there was.
Q. Okay. Do you know when that was?
A. I know it was an eight-month period. I believe it started in October of 2008. Maybe it was September, September/October 2008.
Q. Okay. And so shortly after the contract was entered into?
A. Yes.
Q. Okay. And was -- were -- were all the products that were provided at the beginning of that contract replaced with solvent?
A. No, just the paint product. So the primers and the clear coats that I mentioned earlier can be used -- many of them can be used with either solvent or waterborne.
Q. Okay. So the AWX colorant toners -- you're saying they were replaced for that eight-month period with the solvent-based toners?
A. That's correct.
Q. Is there a name for those solvent-based toners?

A. Ultra 7000.
Q. Is that the premium line?
A. That is our premium solvent line.
Q. All right. Were these removed because AWX was not working?
A. No.
Q. How do you know that?
A. There's an adjustment period sometimes that shops go through, whether it be equipment, whether it be training, that type of thing. So apparently the customer might have been struggling with that, and that's the purpose of putting in the solvent form.
Q. Was AWX removed from the marketplace around that time?
A. No. Like I said earlier, in Los Angeles County, we already converted over a hundred collision shops to -- they had to be using it, and they were using it.
Q. Were the plaintiff -- were the defendants charged for the Ultra 7000 solvent toners for that eight-month period?
A. No, they were not.
Q. Why is that?
A. At that time, the sales representative in our company thought it was best while the customer transitioned to try to make it as easy for them as possible. So that's why they -- we made that decision to do that.
Q. To your knowledge, was -- were the defendants under any

regulatory obligation to use waterborne only?
A. No. They were -- that didn't happen in the San Diego County until much later.
Q. And did the defendants accept those Ultra 7000 toners and use them during that eight-month period?
A. Yes, they did.
Q. How did you -- did you charge -- did you credit them back money? Did you charge -- just provide it for free? Did you document it? Anything else like that?
A. I think we charged them for it. Then we rebated their account at the end of the month for what they spent on it.
Q. And did you document the fact that that eight-month period they were receiving free Ultra 7000 toners?
A. Yes, we did.
Q. And were they charged for all the other paint products and the nonpaint products that they purchased from Sherwin-Williams during that time?
A. Yes, they were.
Q. Okay. I'm just going to take over here the drive for a bit.
I'm going to show you what we have marked as Exhibit 9, which is not stipulated to, I don't believe, but I'm going to put it up on the screen that the jury cannot see.
(Plaintiff's Exhibit 9 marked for identification)

BY MR. WILSON:

Q. But you can see this document, Mr. Hammond?

A. Yes, sir.

Q. Okay. Now, do you know what this document is?

A. Yeah. This is the defendants' --

MR. SORRENTINO: Your Honor, I'll object on -- if he's going to testify about the document, it hasn't been received, and we object to it.

THE COURT: Overruled. It's premature. Your objection is premature.

Go ahead.

BY MR. WILSON:

Q. Can you tell what is this document?

A. This is the defendants' AWX warranty claims from 2008 to present.

Q. Is it a summary of certain information?

A. Yeah. You can see there that the contracts started in September of 2008.

Q. So without -- without telling us the specific description of everything, what is this a summary of?

A. This was a summary of their warranty claims that they communicated with us, my sales force.

Q. And what system was used to create or develop the information to plot out the amounts and times of their warranty claims?

A. Our internal system?
Q. Yeah. What documentation was used to --
A. Oh. PQR, what we call a PQR system.
Q. And briefly, could you describe what the PQR system is?
A. So if a sales representative or a technical representative or a member of our company goes out to actually look at a warranty claim from a customer, what they do is they go out and they document to the best they can everything that's transpired on the paint job.

So they've gone out there with the customer. They're looking at the car. They're getting what -- film thickness readings, asking the painter questions, making sure that they're doing -- doing their homework as far as getting all of the things that were used on the car.

Sometimes -- many times, samples are taken, if at all possible. It depends on what the owner wants to get accomplished with it. And then the employee then goes back to our branch, and we actually enter it into our computer system so we have documentation of that warranty claim.

MR. WILSON: Okay. I move for the admission of Exhibit -- Plaintiff's Exhibit 9 as a 1006 summary.

THE COURT: Any objection to 9?

MR. SORRENTINO: Foundation, Your Honor.

THE COURT: Well, I agree at this point the foundation is not complete as to his knowledge of the accuracy of the information on it. You can ask further questions.

MR. WILSON: Thank you.

BY MR. WILSON:

Q. So have you done anything to determine whether this information accurately depicts the AW -- the AWX warranty claims reported through your PQR system at Sherwin-Williams?

A. I have.

Q. Okay. And did you find -- did you come to any conclusions?

A. Well, I went back and researched them.

Q. And accurate?

A. Yes, I believe this to be a hundred percent accurate.

MR. WILSON: Again, I move for the admission of this summary -- 1006 summary of all of the warranty claims, Judge.

THE COURT: Mr. Sorrentino, any objection?

MR. SORRENTINO: No objection, Your Honor.

THE COURT: All right. 9 is received.

(Plaintiff's Exhibit 9 received in evidence)

BY MR. WILSON:

Q. Okay. So now you were going to talk about a couple of the things on here, and I'm going to ask you about those.

The dots throughout this exhibit are each individual warranty claim?

A. Yes, those dots, and plus they have -- that's the dollar amount.

Q. So along the X-axis -- I believe it's called the X-axis, but the vertical axis is the value of each warranty claim?
A. That's correct.
Q. Okay. And the timeline is across the bottom?
A. Yes, sir.
Q. All right. And then we see two blue lines representing what, the vertical blue lines?
A. September 2008 was the start of the contract. The next one is May 2011, which was the start of the second contract.
Q. All right. Do you know with respect to the AWX warranty claims in September -- shortly after the start of the contract and then in 2010, whether those warranty claims were paid?
A. Yes, they were paid.
Q. Do you know -- if we look a little bit further off into the right side around January 26th, 2013, there are two dots. See that?
A. Yes.
Q. Okay. Did Sherwin-Williams offer to pay those two claims?
A. We did.
Q. Okay. Now, after the red line, which marks August 20th, 2013, roughly, a little squeezed in there are all these blue dots. Now, these are warranty claims. So have you looked at whether or not Sherwin-Williams has denied or approved those warranty claims?
A. They've been denied.

Q. And did Sherwin-Williams -- as Mr. Sorrentino alluded to, did they offer to make payment on some of these?
A. Those 40, no.
Q. In the early stages, do you know of any attempts by Sherwin-Williams to trick the body shops into releasing all their claims in this lawsuit?
A. Tricked them? Tricked them?
Q. Tricking them?
A. No.
Q. "Trickery," I think was the term. Okay.
A. No.
Q. All right. Did you have any participation in attempting to use the PQR process in these warranty claims to -- to make the defendant release all of his obligations, all of his claims in this case?
A. No.
Q. Okay. When Sherwin-Williams pays some warranty claims, do they pay them before any kind of testing or evaluation about what the fault of the appearance defect is?
A. Sometimes we do.
Q. Why?
A. Well, when we have a customer, a partner -- paint partner and we go out and we evaluate the job, there's a lot of discussion with the -- whether it be the owner of the collision shop, manager, whoever is making the decision on their end

about what do we do to resolve it, and we try to come to an agreement in many cases before we actually send in, you know, the actual product to be examined by -- by our lab.

Q. And in those times when you make payments on these warranty claims without any assessment of fault or blame, do you track that?

A. Yeah. We call that a goodwill adjustment, and yes, we do -- we track it by -- by filling out the proper paperwork and making sure that once again the customer has to sign that release.

Q. All right. I'll take this document off.

Now, did there come a time in 2011 when you spoke with Mr. Tyczki about his new shop?

A. I did not speak to John about his new job. Jose Garcia was the one that was talking to John about his new shop, and Jose was then communicating to me the information.

Q. Did you ever speak to him about his new shop under the JJT Company?

A. I did.

Q. And when was that? I mean, not date, but approximately when? Was it in 2011 or before --

A. Yeah, it was in 2011. I don't know the month.

Q. Okay. When you spoke to him, what was the topic of conversation?

A. The topic of conversation was -- is that he was asking for -- he initially started out by asking for a hundred-thousand-dollar advance, and that's what communicate -- was communicated to me, you know, by Jose Garcia, my sales representative.

I crunched the numbers. I was basing the numbers off a three-year business plan I believe that John had given Jose, and I told Jose that that number would be -- you know, was closer to $80,000 off John's projections. I then started the -- running it. We have several approval levels that have to approve things in our corporation.

So I then sent it up the approval ladder for $80,000, but unfortunately when I started talking to my accounting department, they said they felt like the numbers were very aggressive and that we would have to -- you know, that we would need to lower that advance amount to $40,000 versus $80,000.

So I -- I called John personally at that time to let him know that the advance would not be $80,000. It would be $40,000.

Q. At any time before that call, did you tell Mr. Tyczki that he was obligated to enter into a contact for this third shop?

A. I did not.

Q. All right. When you told Mr. Tyczki that the advance would be 40,000, not a hundred or 80-, how did that conversation go?

A. It was a tough conversation. I could tell by the tone of

his voice that he wasn't very happy.
Q. Did you avoid his calls?
A. I did not.
Q. Did you -- if you didn't avoid his calls, did you not call back any time he left a message regarding the advance?
A. No. John never left me a message where I did not call him back.
Q. Now, I'm going to show you what's been marked as Plaintiff's Exhibit 5, which is the JJT supply agreement, which I'm sure is stipulated to.
(Plaintiff's Exhibit 5 marked for identification)
MR. SORRENTINO: Yes.
MR. WILSON: Okay. Thank you.
(Plaintiff's Exhibit 5 received in evidence)
BY MR. WILSON:
Q. This is a stipulated document that's in evidence, and this is the contract between Sherwin-Williams and JJT, Inc. doing business as John's Collision Center.
Do you recognize this document?
A. I do.
Q. Okay. Now, is this an exclusive supply contract?
A. It is.
Q. And the -- I'm not going to take you through the terms about paint products and net sales and all of that, but the price for the products -- if you take a look at Paragraph 3,

you'll see that -- what is the price for the products under this contract?

A. 15-percent discount.

Q. So is that in addition to, or is that already assumed by the payment of an advance?

A. This is in addition to and paid -- with the payment of the advance.

Q. Now, why did Sherwin-Williams provide a 15-percent discount in addition to the prepaid 40,000-dollar advance?

A. Well, we were going off of his three-year business plan that he sent us. We lowered the upfront money because we thought it was a little aggressive, but then we figured, well, we could give him a 15-percent discount, and then that would help out as well.

Q. All right. Did you have any role in getting these contracts to the defendants?

A. I did, yes.

Q. Can you describe what role you had?

A. My role is the accounting department sends me the contract as well as the personal guarantee, and then it's my job to get that to the sales representative to make sure the sales representative gets them signed by the customer.

Q. When you sent the guarantee and the supply agreement, did you send them on different dates?

A. I did not. They came the same date because I received

them on the same e-mail.
Q. Do you remember the date that you sent those two documents?
A. I don't remember the exact date.
Q. All right. Now, I'm going to show you what has been previously marked by the plaintiffs as Exhibit 6, which is the guarantee signed by Mr. Tyczki, which is stipulated.
(Plaintiff's Exhibit 6 marked for identification)
MR. SORRENTINO: Yes.
MR. WILSON: All right. Thanks.
(Plaintiff's Exhibit 6 received in evidence)
BY MR. WILSON:
Q. Have you ever seen this document before?
A. I have.
Q. What is this document, if you can describe it, the purpose of it?
A. This is a personal guarantee that our customers sign in many occasions when we give them a supply agreement.
Q. Okay. Did Mr. Tyczki sign a guarantee for the 2008 JB Collision Services contract?
A. He did not.
Q. Why is that?
A. I'm not sure.
Q. Now, the guarantee that's been admitted as Plaintiff -- as Plaintiff's Exhibit 6 -- excuse me -- is this the document that

you sent on the same -- at the same time with the supply agreement?

A. It would be, yes.

Q. Okay. I'm going to show you Plaintiff's Exhibit 7, which is the check.

(Plaintiff's Exhibit 7 marked for identification)

MR. WILSON: Okay. And which is stipulated by the nodding of opposing counsel.

(Plaintiff's Exhibit 7 received in evidence)

MR. WILSON: As soon as I can do that -- there we go.

BY MR. WILSON:

Q. All right. Now, this is Exhibit 7, and it is a check from Sherwin-Williams paid to the order of JJT, Inc. for $40,000. Is this the -- is this the check that is referenced as the advance in the JJT agreement?

A. Yes.

Q. Okay. And was this negotiated by JJT?

A. When you say "negotiated" --

Q. Cashed. Sorry.

A. Yes.

Q. Okay. And the date of this check is 6/1/2011. Is that the date that it was issued to your knowledge?

A. Should be.

Q. Did you send this to Mr. Tyczki's shop?

A. No. The checks come straight from our corporate

accounting department. They don't come from me.
Q. Did you hear from Mr. Tyczki after he received this 40,000-dollar check with respect to whether or not it was the correct amount or incorrect or anything like that?
A. No.
Q. All right. When was the next time you spoke to Mr. Tyczki after speaking to him about this advance?
A. He called me one day. I don't know if he left me a message and I had to call him back or he -- or I answered the phone when he called me, but I was at an airport, I remember -- I don't remember which airport -- and he had called me.
Q. Do you remember what year it was?
A. I -- I would be guessing. I do not know the year.
Q. That's okay.
What was the substance of that discussion?
A. He wanted to know the exact date that he signed his original supply agreement with us, the one dated in 2008. He wanted to know that exact date.
Q. Did he tell you why?
A. He did not tell me why.
Q. Okay. And did you provide that information to him?
A. I did. I hung up. I called my accounting department because he -- the supply agreement's on file, the signed copy, and they were able to communicate me -- communicate to me the exact date, and then I turned around and called John. So it

was within ten minutes when he and I talked, 15, 20, whatever -- it was really quickly -- and gave him the date that he signed the supply agreement.

Q. Now, at the time -- in the conversation that you had about the advance amount, did Mr. Tyczki complain about product quality of the AWX products or any other product to you?

A. No, he did not.

Q. In the call that you just described about the date of his 2008 contract, was there any complaint or discussion about product quality?

A. There was no discussion about product.

Q. Okay. All right. Are you familiar with the -- are you familiar with the amount of purchases that the defendants made under both of these contracts?

A. I don't know the exact dollar amounts off the top of my head, but I'm familiar with them.

MR. WILSON: All right. I'm going to show the witness Exhibit 55, which I believe has been stipulated to.

(Plaintiff's Exhibit 55 marked for identification)

MR. WILSON: It is the summary -- sales summary that was used in his deposition by you.

MR. SORRENTINO: No. That was objected to.

MR. WILSON: What's that?

MR. SORRENTINO: That was objected to.

MR. WILSON: Hammond deposition, Exhibit 3, that you used?

Well, all right. Let me -- I will show you -- I'm going to show the witness. This is not stipulated to.

BY MR. WILSON:

Q. Okay. Are you familiar with this document, sir?

A. I am.

Q. Okay. And it's four pages. What is this document, briefly describing it?

A. This is a recap of how much money that J&M Auto Body and John's Collision Center had spent with us on paint or G -- what we call GOM and associated products, two separate columns.

Q. Okay. And is it broken down by any period of time?

A. Yes. It looks like it starts in September of 2008, is that year and month number. Where it says 2 double 0809, that's really September of 2008.

Q. Have you done anything to verify the accuracy of these sales numbers?

A. These come from my accounting department. So I assume they're accurate.

Q. And did you testify about these in your deposition as a representative of Sherwin-Williams?

A. I think I remember doing that, yes.

Q. And did you bring this to that deposition to your knowledge?

A. I believe I did.

MR. WILSON: Okay. Your Honor, I move for the admission of Exhibit -- Plaintiff's Exhibit 55 as a summary of documents that were already produced and exchanged by the parties that just total up the amount of purchases which actually otherwise isn't in dispute. I don't know what the objection is, but it's a 1006 summary.

MR. SORRENTINO: Your Honor, still no foundation. I can voir dire the witness with just a couple questions, but there's --

THE COURT: Go ahead. You may.

MR. SORRENTINO: Thank you, Your Honor.

VOIR DIRE EXAMINATION

BY MR. SORRENTINO:

Q. Mr. Hammond --

A. Yes, sir.

Q. -- isn't it true that you did not create this document?

A. I did not create the document, no.

Q. And isn't -- isn't it true that you don't know how the purchase totals were arrived at?

A. They were arrived at by my accounting department.

Q. Okay. In your deposition, Page 18, this would be -- let's see -- Lines 3 to 11.

MR. SORRENTINO: May I proceed or --

MR. WILSON: Go -- go ahead.

BY MR. SORRENTINO:

Q. "Question. Okay. I understand that you did not create the document and you did not put -- provide input into it. You just know how to read it. But do you know how to point -- sorry -- the paint totals are reached with regard to what products are included, or should that be a question for whoever created this document?"

"Answer: That would be a question for them."

"I" -- and I say, "Okay."

And you say, "Could make a very educated guess."

And I respond, "We don't want you to guess because if you guess, then you'll be the witness."

Isn't that what you testified to?

A. Apparently so.

Q. Okay. And furthermore, isn't it true that you don't even know what documents the purchase history is based -- this purchase history is even based on?

A. I'm not sure of that question.

Q. Well, let me read from Page 19, Lines 1 through 4 of your deposition.

MR. SORRENTINO: May I proceed?

MR. WILSON: I'm sorry.

MR. WOODWORTH: Go ahead.

BY MR. SORRENTINO:

Q. "Okay. Oh. One last question. Again, it's just to close the loop. Do you know what documents Robert Ferguson reviewed in order to create Exhibit 3?" Exhibit 3 is the document that we're referring to right now.

"Answer: I do not."

Is that correct? Is that what you --

A. That's correct, yes.

MR. SORRENTINO: Okay. Your Honor, no foundation.

THE COURT: Sustained. The objection is sustained at this point. Foundation is not adequate.

MR. WILSON: Your Honor, we'll go through the time -- we'll put it in through the damages witness. I would note that the amounts are not in dispute, but okay.

DIRECT EXAMINATION (RESUMED)

BY MR. WILSON:

Q. Let's move on a little bit, sir.

Now, you know that there have been some stipulated facts about products that were purchased by defendants during the term of this contract from Keystone Automotive; right?

A. Yes.

Q. Okay. Have you reviewed the information about what those products were?

A. Have I reviewed what the products were?

Q. Not every invoice, but have you reviewed the types of products?

A. Yes. I've reviewed the types of products but not every invoice.

Q. Okay. Were the types of products that were purchased by these defendants from Keystone permitted to be purchased under the contracts?

A. No, they were not.

Q. Thank you, sir.

A. Thank you.

MR. WILSON: That's all I have.

THE COURT: Cross-examination?

MR. SORRENTINO: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. SORRENTINO:

Q. You indicated that Mr. Tyczki -- John Tyczki -- you indicated that all of the warranty claims made by John Tyczki's shops -- after some period of time, some deadlines, some dates, were rejected or denied; correct?

A. That's correct.

Q. And were you the person who made that decision?

A. We as a team made that decision.

Q. Who's on the team?

A. There's lots of members in the Sherwin-Williams Company that's on that team.

Q. How did you communicate that to Mr. Tyczki?

A. I sent him a FedEx.

Q. So is that a letter?

A. It would be a letter, yes.
Q. And did he respond?
A. He sent me an e-mail yesterday morning.
Q. Okay. What did he say in the e-mail?
A. I don't know. I don't have the e-mail in front of me. So I don't have every detail of that.
Q. Can you generally tell us what John Tyczki said to you in response?
MR. WILSON: Objection, Judge. Best evidence on that.
THE COURT: Sustained. It's sustained.
BY MR. SORRENTINO:
Q. Okay. Did John Tyczki tell -- say to you in the letter, "As you know, Hilary Castro will approve the repairs on some vehicles, and so did Derrick King. He promised me that all the warranty claims would be honored and paid by Sherwin-Williams"?
MR. WILSON: Your Honor, objection.
THE COURT: Sustained. It's hearsay. Sustained.
MR. SORRENTINO: All right.
THE COURT: Move on to something else, Mr. Sorrentino.
BY MR. SORRENTINO:
Q. You indicated that you -- well, you testified that it was Jose Garcia who negotiated the September 10, 2008, agreement with John Tyczki; correct?
A. Yes.
Q. All right. Well, isn't it true that when you testified in

deposition, you actually said that you did not know who negotiated that -- that agreement? Isn't that correct, sir?
A. I don't recall.
Q. Okay. Well, on Page 25, Lines 9 through 14 of your deposition, "Question: Who had the responsibility in September of 2008 and the months leading up to that date to negotiate the terms of the contract with John Tyczki, if you know?"
And your answer was "Once again, I have to make an assumption, and I don't know who was directly involved with the negotiation part."
Isn't -- wasn't that your testimony?
A. Yeah. I assumed that Jose Garcia was the sales representative.
Q. You didn't say it then --
A. Okay.
Q. -- right?
So isn't that true?
A. That would be true.
Q. Okay. And, in fact, were you aware that Jose Garcia testified that, in fact, all he did was give the contract to John Tyczki? Were you aware of that?
A. I was not aware of that.
Q. Mr. Garcia's deposition at Page 128, Lines 16 through 24.
MR. SORRENTINO: Can we put that up? Oh, you're not there. Just give me -- it's not working? Just give me the

depo.

That's why I don't like technology. Excuse me.

THE CLERK: Number 3. Yeah. Yeah, I did it from there.

It's working now.

MR. SORRENTINO: It's working now.

BY MR. SORRENTINO:

Q. Okay. We'll start on Line 9 of Page 128. "Do you know" -- this is 2 --

MR. WILSON: Excuse me. Wait a minute. You're reading from whose deposition now?

MR. SORRENTINO: Jose Garcia, the sales rep.

MR. WILSON: Your Honor, he's not -- he's not reading from the witness's own testimony. It's for impeaching. He's reading another deposition. This is --

THE COURT: Okay. Objection is sustained.

MR. SORRENTINO: Fine.

BY MR. SORRENTINO:

Q. All right. Were you aware that Mr. Garcia testified that, in fact, he did not --

MR. WILSON: Objection, Your Honor.

BY MR. SORRENTINO:

Q. -- have any --

THE COURT: Mr. Sorrentino, that's the exact thing I just sustained the objection to.

MR. SORRENTINO: All right. I wasn't going to read --

THE COURT: No, but if you summarize or characterize it, you're doing the same thing.

MR. SORRENTINO: Okay.

BY MR. SORRENTINO:

Q. Now, Mr. Hammond, you stated that you had or that you spoke to -- had some interaction with John Tyczki in 2011. Do you recall that?

A. That's correct.

Q. In fact, though, you actually had lunch with John Tyczki at a local restaurant here, The Brigantine, in October of 2008; correct?

A. That is correct.

Q. And the purpose of that meeting was because John Tyczki in October of 2008 was complaining about the AWX product line that had just been installed in his shops; isn't that correct?

A. That is not correct. I do not recall any part of that conversation.

Q. So you're not saying that he didn't complain? You're just saying you don't recall any part of the conversation?

A. I remember that luncheon as being a -- basically a luncheon where everybody was happy and we were talking about various things because he had just signed a supply agreement. I don't remember anything that was controversy or negative regarding that lunch.

Q. Do you recall the purpose of the meeting?
A. I do not recall the purpose of the meeting.
Q. Do you recall anything at all that was discussed during that meeting?
A. I do not recall anything at all.
Q. All right. Do you remember -- do you remember anything that was said by anyone at any time during that meeting?
A. I do not. That was a few years ago.
Q. And this is the month October of 2008 that the AWX product was removed from Tycz- -- John Tyczki's shops; correct?
A. I don't recall AWX being removed from his shop. I don't recall any discussion regarding Ultra 7000. I don't remember us talking about product at all.
Q. You just remember that there was a meeting and nothing else?
A. That's correct. Like I said, I remember it being a meeting that I thought was pretty positive. I don't remember it being -- it being a negative meeting.
Q. Do you recall when the AWX waterborne line was removed from John Tyczki's shops and the solvent paint product that you sell was put into his shops? Do you remember when that occurred?
A. I don't know the exact date.
Q. Well, what about the month?
A. I believe it was referenced earlier.

Q. Excuse me?
A. I believe that it was referenced earlier. I didn't personally know the month.
Q. Okay. Was it in 2008?
A. Yes.
Q. Was it before or after this meeting that you had with John Tyczki in 2000 -- in October of 2008?
A. I don't know.
Q. And you've testified that John Tyczki received rebates for the solvent paint that he purchased during these eight months that he was not being sold the AWX; correct?
A. Yes, sir.
Q. And that means basically that you gave John Tyczki's shops -- two shops free paint for eight months; correct?
A. We gave him the paint products. We did not give him the primers and the clear coats and those type of things.
Q. And how much free paint -- whatever -- however you want to define it, how much free stuff did you give to John Tyczki's shops during that eight-month period that you're indicating there was no problem?
A. I don't know -- I don't know the exact dollar amount.
Q. Now, you referenced a -- well, there was reference to a chart that had warranty claims on it. That was Plaintiff's Exhibit 9. Do you recall that just now?
A. Yes, sir.

Q. Yeah. Isn't it true that when a sales rep such as Jose Garcia or Hilary Castro give free product -- goodwill free product to a shop that that information is not noted on that shop -- the chart that's marked as Exhibit 9?
A. If they were to give them free product, well, it's not part of their sales, no.
Q. And -- and in the instances where that was done, that information is not on Plaintiff's Exhibit 9; correct?
MR. WILSON: Could you show him Plaintiff's Exhibit 9? Well, I think he's --
BY MR. SORRENTINO:
Q. Do you know what -- do you remember Exhibit 9?
A. Which is Exhibit -- oh. Is that the warranty claims?
THE COURT: That's the summary.
BY MR. SORRENTINO:
Q. Yes.
A. No.
Q. No what?
A. That is what on there? What's the question?
Q. When goodwill free products -- when free products were given --
A. Oh.
Q. -- by Hilary Castro or Jose Garcia to John Tyczki's shops, is that information noted on Exhibit 9, on that warranty chart?
A. It might not be.

Q. Do you know?

A. Well, we -- we have several ways that we take care of our warranty claims.

Q. So do you know whether or not it's on the chart that's marked as Plaintiff's 9?

A. I do not know that.

Q. In fact, Mr. Hammond, sales reps such as Jose Garcia and Hilary Castro actually handle complaints from body shops on their own, don't they?

A. They have a dollar limit of $500 that they can approve.

Q. I'm going to read from your deposition Page 132, Lines 10 through 19.

MR. WILSON: Can you give me one second to get there, please. Thanks.

130 -- Page 132?

MR. SORRENTINO: No. Page 32, Lines -- sorry if I said that -- 10 through 19.

MR. WILSON: Okay. Done it.

You're going to start with Line 10?

MR. SORRENTINO: Yes.

The question is to you "The customer makes a complaint presumably to a sales representative. Is the next step that the sales representative notifies the branch manager, or is there something in between?"

And your answer was "The sales representative might call -- depending on the level of the complaint and how well his knowledge is regarding the complaint, he might call a technical representative to come and assist him to look at the job."

"Question: So he can do that on his own, the sales rep?"

"Answer: Yes."

BY MR. SORRENTINO:

Q. So there are times where a sales rep might call nobody, not a tech, not you, and not even his branch manager and handle a complaint on his own; correct?

A. They can look at the job and make -- and do a discovery on the job by themselves, but they can't give away product to that shop --

Q. Uh-huh.

A. -- without going through a branch.

Q. Right. They're not supposed to; correct?

A. Well, we have -- we have people -- we have auditors, we have branch managers, we have branch managers that are responsible for P&L's. Nothing leaves the branch without an invoice or piece of paper that accounts for it.

Q. So my question is: They, meaning sales reps, are not supposed to give away free products on their own; correct?

A. Not without a piece of paper that -- in other words, they would have to get the product from the branch, and the branch manager would have to approve them getting that product.

Q. What about approving -- strike that.

What about a sales rep approving the repair of a Sherwin-Williams paint job using a competitor's product? Are they allowed to do that?

A. Are they allowed to approve a paint job by a competitor's product, a warranty job?

Q. Yes.

A. No.

Q. But that happened in this case, didn't it?

A. Were they approved? I don't know that they ever looked at any Spies Hecker paint job and approved a warranty.

Q. No. No, Mr. Hammond. Mr. Hammond, isn't it true that sales reps such as Hilary Castro are not -- are not permitted to approve a warranty repair on an AWX paint job by using a competitor's product? Isn't that true?

A. That is not true.

Q. Oh. Were you aware that Hilary Castro had, in fact, approved a warranty repair on September 9th, 2013, using a competitor's product?

A. I saw the documentation earlier that she approved a warranty, and I remember us talking about in our -- in my deposition about that, that it happened. So that's the first I had heard about it.

Q. Okay. And that was last year in 2014; correct?

A. Yes.

Q. So the sales rep-- no sales rep, no sales manager told you that until I showed you the document in your deposition; correct?
A. As far as I know.
Q. Does every complaint made by a shop owner result in a PQR, the product quality report you referenced?
A. No.
Q. Who makes a decision as to whether or not documentation such as a PQR is going to be generated?
A. The sales representative that's on the spot.
Q. So in this case, it would be Jose Garcia or possibly Hilary Castro; correct?
A. Could be.
Q. And who makes a decision as to whether they're going to -- whether a complaint by a shop owner is going to be considered a warranty claim?
A. Well, we work with our customers all the time, our partners hand in hand. So if a -- if a collision shop was to call a sales representative to say, "Come out and look at this job that is not doing whatever," then the sales representative will go out, talk to the customer one on one, and they make decisions on the spot.

In those situations, we don't necessarily call them warranty. We take -- we might take care of the customer. We negotiate with the customer and come up with something that's going to work for both parties.

Q. But that's only if the sales rep elevates the complaint to that level; correct?

A. Well, like I said, the sales representative is talking with the customer so he or she, as long as it's under $500, could -- could settle that on the spot.

Q. So a sales rep can make a series of 500-dollar settlements or resolutions without having to elevate the complaint to the status of a PQR or to a warranty claim; is that correct?

A. Well, it's correct to a degree, but like I said earlier, a branch manager is responsible for their P&L, and common sense is going to tell a branch manager if there's a 500-dollar complaint being filed every day or by -- or a couple of times a week by a particular customer, they're responsible for their P&L. They're going to bring that to people's attention.

Q. When a sales rep elevates a complaint and does some sort of paperwork on it, is -- is that paperwork maintained in some way?

A. It is now.

Q. Now?

A. In today's world, it's maintained online. In the past, it was maintained with a piece of paper.

Q. Okay. And where would that be kept?

A. The piece of paper?

Q. Yes.

A. That would be kept at the branch.

Q. Okay. I'm going to point you to your deposition on Page 38, Lines 7 through 13. This is in specific reference to a PQR or PQR's, period.

"Question: Okay. And those are documents also kept in the branch?"

Your answer was "I do not know."

MR. WILSON: Your Honor, I object. He's talking about something else. He's talking about the PQR. Now he's asking about PQR.

MR. SORRENTINO: Well --

THE COURT: Hold on. Hold on. The objection is overruled.

You may answer. Were you asked that question? Did you give that answer?

THE WITNESS: Well, you see that what's on there says -- our old system before the PQR system was called a product performance report.

BY MR. SORRENTINO:

Q. Okay.

A. All right. And so we're talking about two different things. A product performance report is different than the PQR.

Q. My next question to you was "Do you know if the backup documents containing the information provided by the sales reps or tech reps are kept or maintained by Sherwin-Williams in any way?"

And you answered, "I do not know."

A. Right. Those are backup documents. So those aren't the documents that we're talking about here. That's -- we were talking about, like, if somebody was making handwritten notes on a pad, that those were kept anywhere, and they're not.

Q. Okay. And I'm going to direct your attention to Page 35, 11 -- Lines 11 to 13.

My question was "Whose decision is it in those situations that a PQR summary not be generated?"

And your answer was "The people on-site with the customer."

Did you say that?

A. I did.

Q. And is the people on-site with the customer the sales rep?

A. It could be a variety of people with our company.

Q. Well, the first person who had learned of the complaint would be the sales rep; correct?

A. It could be the technical representative. It could be the area sales manager. It could be somebody like myself if the customer wanted to call me.

Q. And in general, is it the sales rep?

A. We would hope that the sales representative is their go-to person because that's the Number 1 person that's supposed to be taking care of the account.

Q. Is there any policy at Sherwin-Williams for sales reps to -- to retain notes or even make notes?

A. There is no written policy, no.

Q. And with regard to goodwill adjustments, the sales rep themselves -- this is the free product -- can actually give that material themselves to the -- to the body shop; correct?

A. They have approval of up to $500, as I mentioned earlier.

Q. Okay. That's not my question. My question is: Isn't it true that the sales rep themselves can actually give the free product to the body shops?

A. You're talking about physically giving it to them?

Q. Yes.

A. Yes, they can do that.

Q. Okay.

A. As long as they go to the branch and get the proper paperwork, they can.

THE COURT: Mr. Sorrentino --

MR. SORRENTINO: Yeah.

THE COURT: -- do you have quite a bit more of this witness?

MR. SORRENTINO: No. Oh, no. I'm sorry. I do not. I just have a couple more questions.

THE COURT: All right. I'll allow you to ask those so we can finish with this witness today.

MR. SORRENTINO: Thank you.

BY MR. SORRENTINO:

Q. I'm going to direct your attention to Page 112, and that would be Line --

MR. WILSON: Your Honor, I don't believe this would be shown to the jury before -- he's just showing deposition testimony.

MR. SORRENTINO: Oh, no. I'm not showing anything. They have to approve --

THE COURT: It's not on the screen.

MR. WILSON: Sorry.

MR. SORRENTINO: Oh.

MR. WILSON: My mistake.

BY MR. SORRENTINO:

Q. Okay. When I asked you about approving warranty repairs using a competitor's product, you said that that wasn't necessarily against the rules; correct?

A. That is correct.

Q. Okay. On Page 112, Lines 23, and then going to the next page up to Line 4, I asked you, "Is there a practice -- a custom and practice on the part of Sherwin-Williams not to allow that or approve this type of work because the repair would be done with another manufacturer's product?"

And your answer was "The practice would be that we would take -- replace our product with our product if it was a warranty situation. That would be the general practice."

Isn't that true?

A. That is the general practice, yes.

Q. Okay. We have a stipulation that Sherwin-Williams has $10 billion in sales annually. Do you know that? Did you hear that when the judge read that?

A. I did hear that, yes.

Q. Okay. What is the value of the Sherwin-Williams Company?

MR. WILSON: Objection.

THE COURT: Sustained.

Anything else, Mr. Sorrentino?

MR. SORRENTINO: No, Your Honor. I have nothing --

THE COURT: All right. Any other questions of this gentleman?

MR. WILSON: Your Honor --

THE COURT: Mr. Wilson, let me ask you -- if you just have a couple questions, we'll take them now. If it's going to be five minutes, even five minutes, I'm going to recess.

MR. WILSON: I'd prefer that we recess --

THE COURT: Okay.

MR. WILSON: -- since I do have a few --

THE COURT: You may stand down, Mr. Hammond. Thank you.

Ladies and gentlemen, we're going to be in recess until tomorrow morning at 9:00 o'clock. As I said, if you get here a little bit early, just go to the jury room. There will be breakfast rolls. You can avail yourself of the coffee, but we'll start promptly with the resumption of testimony at 9:00 o'clock.

Have a nice evening. Remember the Court's admonition. See you tomorrow.

If you want to leave your notepads -- just leave them on your chair. We'll lock them up at night. No one will touch your notepads. Just leave your notepads under the chair.

JUROR FOX: I see your point actually. Don't want that stuff leaving the courtroom.

Thank you.

JUROR CARLSON: Thank you for that. I apologize for holding you up.

THE COURT: Good night, Mr. Winder.

JUROR WINDER: Good night.

(Proceedings were heard out of the presence of the jury:)

THE COURT: All right. The jury is not present. Counsel and the parties are present.

Anything else we need to take up before we recess for the evening?

MR. WILSON: Nothing from us.

MR. SORRENTINO: No, Your Honor.

THE COURT: All right. See you tomorrow a little bit before 9:00 o'clock, please. Be ready to go at 9:00.

MR. WILSON: Thank you.

THE COURT: We're in recess.

MR. WILSON: We will.

(Proceedings adjourned at 5:05 p.m.)

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Sunday, December 6, 2015

/S/ James C. Pence

James C. Pence, RMR, CRR, CSR No. 13059
U.S. Court Reporter